



ILLINOIS STATE
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STANDING COMMITTEE ON GOVERNMENT LAWYERS

The newsletter of the ISBA's Standing Committee on Government Lawyers

• FINAL PRINTED ISSUE •

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Clearing the air on the State's new smoking ban

By James W. Chipman*

Introduction and background

In the legislative drafting process, it is common to include in a piece of legislation a provision setting forth the purpose of the bill in order to establish the general tone and intention of the legislative body. As one reads the new Smoke Free Illinois Act,¹ there is no doubt what the Illinois General Assembly was trying to accomplish. Citing the findings of the United States Surgeon General, the Environmental Protection Agency, and the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Illinois lawmakers were concerned with protecting the public from the health risks associated with indoor exposure to secondhand smoke.² Reports from these organizations indicate that some 2,900

Illinois citizens lose their lives each year from exposure to the hazard of secondhand smoke and that the problem cannot be eliminated or reduced to safe levels through ventilation or air cleaning filtration systems. This left the General Assembly with just one option—to eliminate all indoor smoking activities in public places wherever practicable.

Senate Bill 500 (Cullerton, D-Chicago) had 18 sponsors in the Senate and 34 in the House. Although popular in both legislative chambers, to no one's surprise, the measure faced stiff opposition from the tobacco companies, bar owners, restaurateurs, and those in the hospitality industry.³ In the end, the bill prevailed in the Senate with a vote of 34-23-1 and cleared the House by a margin of 73-42-1. The Governor signed the bill on July 23, 2007, and it became effective as Public Act 95-017 on January 1, 2008.

Illinois became the 26th state, in addition to Washington, D.C. and Puerto Rico, to pass some form of a smoke free law. On the international scene, Ireland became the first country to enact a nationwide smoking ban in 2004. A number of other countries have

since followed suit.⁴

Requirements of the Act

The new law protects the public from exposure to secondhand smoke by prohibiting smoking in public places and places of employment and within 15 feet of any entrance to a public place or place of employment.⁵ A "place of employment" is defined as "any area under the control of a public or private employer that employees are required to enter, leave or pass through during the course of employment."⁶ These areas include offices and work areas, restrooms, conference and classrooms, break rooms and cafeterias and other common areas.⁷ The 15-foot ban also applies to windows that open and ventilation intakes that serve an enclosed area.⁸ There is no requirement for an employer to provide an outdoor shelter for smokers. In fact, an employer may designate additional areas in the workplace as smoke free, such as a non-enclosed area.⁹

The term "public place" is broadly defined to include "that portion of any building or vehicle used by and open to the public,"¹⁰ including those owned or leased by the government.¹¹ One

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interesting government venue where the ban could have a dramatic adverse effect is the State's 28 prisons, which until the ban went into effect, still sold cigarettes in prison commissaries and allowed inmates to light up in cells and elsewhere. Regardless of how many of the approximately 44,000 prisoners in Illinois smoke, the new law means no more cigarettes anywhere in the facilities at any time.

Under the Act, smoking is still permitted outdoors, but it must take place 15 feet away from an exit, entrance, open window, or ventilation intake that serves an enclosed area where the activity is prohibited. Thus, patrons at beer gardens, tents, and outdoor patios can light up as long as the areas are not enclosed¹² or unless a local ordinance bans it.¹³

Signage and ashtrays

Beginning on January 1, 2008, "No Smoking" signs that meet certain specifications in the Act must be posted at each entrance to the place of employment or public place where smoking is prohibited by the person in control of the place.¹⁴ The required signs may be downloaded from the Illinois Department of Public Health's (Department) Web site (www.smoke-free.illinois.gov/Smoke-FreeSign.pdf). Ashtrays must be removed from areas where smoking is prohibited.¹⁵

Exemptions

Only four specific areas are exempt from the requirements of the Act.¹⁶ Section 35 allows smoking to take place in private residences or other dwelling places unless these areas are used as a child care, adult day care, or healthcare facility, or any other home-based business open to the public.¹⁷

Retail tobacco stores in operation before January 1, 2008, that derive more than 80 percent of their gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories are also exempt.¹⁸ A retail tobacco store that begins operation after January 1, 2008, may qualify for an exemption only if it is located in a freestanding structure occupied solely by the business and smoke from the business does not reach an enclosed area where smoking is banned.¹⁹ A tobacco department or section of a

larger commercial establishment or an establishment with any type of liquor, food, or restaurant license is not considered a retail tobacco store and must comply with the Act.²⁰ A retail tobacco store is required to provide an affidavit by January 31 of each year to the Department stating the percentage of its gross income that was derived from the sale of tobacco products.²¹

Smoking is also permitted in private and semi-private rooms in nursing homes and long-term care facilities where one or more of the occupants smoke and they have agreed in writing to stay in a smoking room.²² Under proposed rulemaking by the Department, which is discussed below at length, these facilities must comply with statutes and administrative rules under which the facility is licensed and the fire protection and life safety codes included in those rules.²³

Last, hotel and motel guest rooms that are designated as smoking rooms are exempt from the law, provided that the rooms on the same floor are contiguous and smoke from these rooms does not infiltrate into other areas where smoking is prohibited.²⁴ Another important requirement is that no more than 25 percent of the rooms in a hotel or motel may be designated as smoking rooms.²⁵ The number of smoking and nonsmoking rooms may not be changed, except to permanently add additional nonsmoking rooms.²⁶

Complaints, enforcement, and violations

Any person, such as an employee or patron, may file a complaint with the Department, a State certified local public health department, or a local law enforcement agency against an individual or employer.²⁷ Individuals can also file a complaint by calling the Department's toll-free complaint line at (866) 973-4646 or by filing a written complaint. Complaint forms may be accessed online at www.smoke-free.illinois.gov/Smoke-free_PrintableComplaintForm.pdf.

Businesses that violate the law are fined on a progressive scale.²⁸ Fines range from \$250 for a first offense²⁹ to \$2,500 for multiple infractions within one year of the first violation.³⁰ An individual violator may be fined from \$100 to \$250.³¹ The question of how a violator can appeal or challenge a citation is one of several hot button issues that has

not yet been resolved.

Home rule regulation

The state law still permits local control, as long as the local ordinance is more stringent than the Act.³² Local authorities may also increase fine structures for violations, add enforcement agencies and protocols, and prohibit smoking in other areas.³³ Currently, there are 45 city and county ordinances in Illinois banning smoking that were either already in effect or were passed after the statewide ban became law.³⁴

Rulemaking attempts—up in smoke?

As background, Illinois law authorizes and requires administrative agencies to promulgate rules to implement the purpose of any specific statute affecting its operations. The Illinois Administrative Procedure Act (IAPA)³⁵ sets forth the steps to be followed in order for an agency to properly promulgate rules.

The procedures include two notice periods. The public comment or first notice stage begins when an agency files a notice with the Secretary of State for publication in the *Illinois Register*.³⁶ The public is entitled to at least 45 days notice so comments may be filed with the agency on the proposed rulemaking.³⁷

The next stage, the legislative review or second notice period, commences when the agency serves written notice on the Joint Committee on Administrative Rules (JCAR),³⁸ a bipartisan agency composed of 12 members of the General Assembly. After various reviews of the proposed rule changes are conducted internally by the JCAR staff, the matter is scheduled to be heard by the JCAR at a monthly meeting in either Springfield or Chicago. The JCAR can approve, object, or recommend changes to the proposals.³⁹

The final stage in the rulemaking process is adoption.⁴⁰ In order to implement the changes, the agency must file certain documentation with the Secretary of State after the expiration of the second notice period.⁴¹

The Department's proposed rules on the Smoke Free Illinois Act first appeared in the *Illinois Register* on October 5, 2007.⁴² The rules, which may be accessed at www.ilsos.net/departments/index/register/register_volume31_issue40.pdf, define 65 words

and terms.⁴³ Elsewhere in the rulemaking, there are three main areas of focus: proprietor responsibilities, outdoor patios, and complaints.⁴⁴ Proprietors are obligated to insure that smoking does not occur in areas where it is banned, stop smoke from infiltrating into areas covered by the Act, post signs, remove ashtrays, inform employees and applicants for employment of the prohibition, and not retaliate against an individual who has exercised any right under the law.⁴⁵ Second, smoking is permitted in an outdoor patio area provided the space is not entirely enclosed and is controlled by the proprietor.⁴⁶ Finally, the rules set out the procedure under which a complaint may be lodged with either the Department or other designated officials and the factors these agencies may consider in determining whether a violation has occurred.⁴⁷

After the 45-day first notice period expired, the rules were scheduled to be heard by JCAR at its December 11, 2007, meeting. Committee members postponed the matter until the January meeting after citing six problems with the proposed rules.

At the meeting on January 9, 2008, JCAR voted 9-1 to object to the proposed rulemaking and prohibit its filing with the Secretary of State. The Committee found that the adoption of this rulemaking would constitute a serious threat to the public interest and welfare. The reasons for the objection and prohibition were as follows:

JCAR objected to and prohibited filing of the rulemaking because it contains no process by which an accused violator can argue that no violation occurred, appeal a finding of a violation, or appeal the amount of the imposed fine. An alleged violator's only options are to pay the fine or challenge enforcement action through the circuit court. Lack of due process threatens the public interest and welfare. The proposed rulemaking may not be filed with the Secretary of State or enforced by the Department of Public Health for any reason following receipt of this certification and statement by the Secretary of State for as long as the Filing Prohibition remains in effect.⁴⁸

Smoldering questions and possible legislative fixes

JCAR's latest action means the controversy over the smoking ban rules has only just begun. Under the IAPA, a

prohibition is permanent unless: (1) the agency agrees to satisfactorily modify the proposed rulemaking;⁴⁹ (2) JCAR withdraws the prohibition within 180 days;⁵⁰ or (3) the General Assembly passes a joint resolution within 180 days stating that it desires to discontinue the prohibition.⁵¹ While Department officials were urged to redraft the proposals for the next scheduled meeting of JCAR on February 14, 2008, the Department's position was not known when this edition of the newsletter was submitted to print.

In the meantime, with no workable administrative rules yet in place and no time frame for their implementation, some legislators have taken matters into their own hands and introduced bills to amend the month-old law. Representative Mike Boland (D-East Moline), who voted against the ban, is sponsoring House Bill 4333. The proposal would add veterans' halls and clubs, like the American Legion and Veterans of Foreign Wars, to the list of exempted places where smoking can occur. Representative Boland believes the amendment is a way of rewarding veterans for their past military service to the country.

Representative Randy Ramey (West Chicago), who also opposed the law, is backing legislation that goes one step further. Under House Bill 4184, certain businesses, including riverboat casinos, horse racing tracks, adult entertainment facilities, private clubs that can document that three-fifths of its membership approves of smoking on the premises, some taverns that can prove that less than 10 percent of its revenue comes from food sales, and establishments hosting a tobacco convention, could seek a special smoking license, just like a liquor license, from their local municipality.

Both bills have been assigned to the House Environmental Health Committee.

Other issues that need to be addressed include whether universities can legally conduct smoking-related research in state facilities and to what extent businesses, with outdoor premises that otherwise meet the requirements of the law, are liable for smoke that migrates into areas where the activity is banned.

A fast and easy solution? - Don't hold your breath

Several lawmakers tried to expand

Standing Committee on Government Lawyers

Published at least four times per year.

Annual subscription rate for ISBA members: \$20.

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the exemption language last year when Senate Bill 500 was being debated, but those efforts failed. Public interest groups and private organizations will no doubt fight attempts in the current legislative session to erode the statewide ban or amend other existing provisions. Therefore, the JCAR would appear to be the best venue for solving the Act's more pressing problems, such as the due process concern. The rulemaking process is designed to allow participation from all interested parties—the public, lawmakers, and special interest groups. The forging of a consensus on a comprehensive set of rules will take time and effort but ultimately it should eliminate the need for legislative action where opponents would have another opportunity to rewrite the law.

*The author is the Assistant General Counsel of the Illinois Department of Revenue and a member of the ISBA's Standing Committee on Government Lawyers. The opinions expressed herein are solely his and not those of the Department of Revenue.

1. See Public Act 95-017, effective January 1, 2008, to be codified at 410 ILCS 82/1 et seq.

2. To be codified at 410 ILCS 82/5.

3. According to the Tobacco Free Kids Web site (www.tobaccofreekids.org), the other states are Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Louisiana, Maine, Maryland (Feb. 1, 2008), Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon (Jan. 1, 2009), Rhode Island, Utah, Vermont and Washington.

4. Id. Smoke free countries include Bermuda, Bhutan, England, France, Iceland, Italy, Lithuania, New Zealand, Northern Ireland, Norway, Scotland, Sweden, Uruguay and Wales. In addition, most Canadian provinces/territories and Australian states/territories have enacted such laws.

5. To be codified at 410 ILCS 82/15.

6. To be codified at 410 ILCS 82/10.

7. Id.

8. Id.

9. To be codified at 410 ILCS 82/30.

10. To be codified at 410 ILCS 82/10.

Examples of a "public place" under the Act include hospitals, restaurants, bars, taverns, retail stores, offices, elevators, indoor theatres, libraries, museums, concert halls, educational facilities, auditoriums, enclosed or partially enclosed sports arenas, meeting rooms, schools, exhibition halls, commercial establishments, convention facilities, polling

places, private clubs, gaming facilities, college dormitories, healthcare facilities or clinics, enclosed shopping centers, retail service establishments, government facilities, financial institutions, ticket areas, public hearing facilities, public restrooms, nursing homes, waiting areas, lobbies, bowling alleys, skating rinks, reception areas, public conveyances, like taxi cabs, buses, and shuttles, and no less than 75 percent of the sleeping quarters within a hotel, motel, resort, inn, lodge, bed and breakfast or other similar public accommodation rented to guests.

11. Id.

12. Id. See definition of "enclosed area".

13. Some municipalities are banning smoking outdoors. For instance, smoking at the beach is prohibited in the cities of Chicago, Lake Forest, and Wilmette, while Deerfield, Buffalo Grove, and Oak Park have banned it in parks. Evanston is considering a prohibition on beaches and playgrounds.

14. To be codified at 410 ILCS 82/20(a).

15. To be codified at 410 ILCS 82/20(c).

16. To be codified at 410 ILCS 82/35.

17. To be codified at 410 ILCS 82/35(1).

18. To be codified at 410 ILCS 82/35(2).

19. Id.

20. To be codified at 410 ILCS 82/10.

21. To be codified at 410 ILCS 82/35(2).

22. To be codified at 410 ILCS 82/35(3).

23. Smoke Free Illinois Code, 31 Ill. Reg. 13672 (2007) (to be codified at 77 Ill. Adm. Code 975, Section 975.90 (c)) (proposed Oct. 5, 2007).

24. To be codified at 410 ILCS 82/35(4).

25. Id.

26. Id.

27. To be codified at 410 ILCS 82/40(b).

28. To be codified at 410 ILCS 82/45(b).

29. Id.

30. Id.

31. Id.

32. To be codified at 410 ILCS 82/65(a).

33. To be codified at 410 ILCS 82/65(b).

34. According to the Smoke Free Illinois Web site (www.smokefreeillinois.org), the Illinois counties and cities are Arlington Heights, Barrington, Bedford Park, Bloomington, Buffalo Grove, Burr Ridge, Carbondale, Champaign, Chicago, Cook County, Deerfield, DeKalb, Elk Grove Village, Evanston, Hawthorn Woods, Highland Park, Hinsdale, Hoffman Estates, Lake County, Lake Forest, Libertyville, Lincolnshire, Lindenhurst, Long Grove, McLean County, Mt. Prospect, Naperville, Normal, Northbrook, Oak Park, Orland Park, Palatine, Park Forest, Park Ridge, Riverside, Rolling Meadows, Sangamon County, Schaumburg, Skokie, Springfield, Tinley Park, Urbana, Vernon Hills, Wheaton, and Wilmette.

35. 5 ILCS 100/1-1 et seq. (West 2006).

36. 5 ILCS 100/5-40(b) (West 2006).

37. Id.

38. 5 ILCS 100/5-40(c) (West 2006).

39. Id.

40. 5 ILCS 100/5-40(d) (West 2006).

41. 5 ILCS 100/5-65(a) (West 2006).

42. 31 Ill. Reg. 13672 (2007).

43. Id. Section 975.10 of the Smoke Free Illinois Code (to be codified at 77 Ill. Adm. Code 975).

44. Id. Sections 975.40, 80, and 100 of the Smoke Free Illinois Code (to be codified at 77 Ill. Adm. Code 975).

45. Id. Section 975.40 (b) and (c) of the Smoke Free Illinois Code (to be codified at 77 Ill. Adm. Code 975).

46. Id. Section 975.80 of the Smoke Free Illinois Code (to be codified at 77 Ill. Adm. Code 975).

47. Id. Section 975.100 of the Smoke Free Illinois Code (to be codified at 77 Ill. Adm. Code 975).

48. 32 Ill. Reg. 1169 – 1/25/08.

49. 5 ILCS 100/5-115(d) (West 2006).

50. 5 ILCS 100/5-115(a) (West 2006).

51. 5 ILCS 100/5-115(c) (West 2006).

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In-Sites

Go Green! There are many ways to be conscious of our environment. And, believe it or not, many are “convenient!”

Better World Shopper, <www.betterworldshopper.com>, suggests “voting with your wallet” and choosing to spend a bit more on fairly traded, environmentally conscious and sweat-free goods. Be a better world shopper!

Fair Trade Coffee tells us that the United States consumes 20% of the world’s coffee. Many agricultural workers toil in poverty. “Fair Trade is a viable solution to this crisis, assuring consumers that the coffee we drink was purchased under fair conditions. To become Fair Trade certified, an importer must meet stringent international criteria; paying a minimum price per pound of \$1.26, providing much needed credit to farmers, and providing technical assistance such as help transitioning to organic farming. Fair Trade for coffee farmers means community development, health, education, and environmental stewardship.” Fair Trade also has an online store. See Fair Trade Coffee Web site for information on where to buy. <<http://www.globalexchange.org/campaigns/fairtrade/coffee/>>

For information on organic, sweat-free, fair trade clothing, go to <www.coopamerica.org>.

<www.newdream.org/consumer/index.php>, <www.fairtradefederation.org>, <www.organicconsumers.org/clothes/leaders.cfm>.

To expand your “green” behavior to the office, visit <<http://www.thegreenoffice.com/>>. We all use so many electronic products that are constantly being updated. Consult the Environmental Protection Agency at <<http://www.epa.gov/epaoswer/hazwaste/recycle/ecycling/index.htm>>. You can also donate your used computer: <<http://www.epa.gov/epaoswer/hazwaste/recycle/ecycling/donate.htm>> or join a recycled office product cooperative: <<http://www.recycledproducts.org/join.html>>. One of the best ways to recycle is to make sure you reuse or recycle your inkjet and toner cartridges. You can help conserve resources and reduce pollution, as more than 300 million cartridges end up in landfills every year! Remanufacturing just one cartridge saves about ½ gallon of oil. Individual companies offer recycling programs, so check with the manufacturer of your cartridge.

Lightbulbs have also come a long way. As your old bulbs burn out, replace them with energy-efficient “Energy Star” products. The Department of Energy has many great ideas and resources: <http://www.energystar.gov/index.cfm?c=lighting.pr_lighting>.

There are more energy-saving tips and products at <http://www.eere.energy.gov/consumer/products_services/energysaving/index.cfm/mytopic=4000>.

In Illinois, the Illinois Recycling Association provides a plethora of information on e-cycling, freecycle. <<http://www.illinoisrecycles.org/>>. “The purpose of this site is to provide a listing service to foster the exchange, re-use and recycling of valuable commodities, products and services.” <<http://illinoisrecyclesdirectory.org/IRecycle/>>.

Household cleaning and other products also harm the environment. Green cleaning products are those a trend away from chemically-reactive and toxic cleaning products. MSNBC provides natural cleaning tips <<http://www.msnbc.msn.com/id/17966376/>>. There are organic cleaning solutions, like products from Seventh Generation, Mrs. Meyer’s Clean Day, Method, and Shaklee.

<<http://earth911.org/>> is a site that helps locate nearby recycling facilities for used motor oil, batteries, electronics and a host of other things that we often put in the trash. It also provides tips on living more “greenly.”

More information is available on the internet and through governmental and nonprofit agencies.

Attorney General issues opinions

By Lynn Patton

Under section 4 of the Attorney General Act (15 ILCS 205/4 (West 2006), as amended by Public Act 95-699, effective November 9, 2007), the Attorney General is authorized, upon request, to furnish written legal opinions to State officers and State’s Attorneys on matters relating to their official duties. The following is a summary of official opin-

ion Nos. 07-001 through 07-003 and informal opinion Nos. I-07-051 through I-07-057 that may be of interest to the government bar.

Copies of an opinion may be requested by contacting the Opinions Bureau in the Attorney General’s Springfield office at (217) 782-9070. Copies of official opinions may also be found on the internet at <<http://www.illinoisattorneygeneral.gov/opinions/index.html>>.

<<http://www.illinoisattorneygeneral.gov/opinions/index.html>>.

Opinion No. 07-001 Issued December 24, 2007

Overage Reports under the State Officials and Employees Ethics Act

Pursuant to section 20-65 of the State Officials and Employees Ethics

Act, if an Executive Inspector General (EIG) fails to complete an investigation within six months after opening an investigation, he or she must submit an overage report to both the Commission and the "appropriate ultimate jurisdictional authority" setting forth the general nature of the allegation and the reason for failing to complete the investigation within six months. Therefore, the EIG for the Agencies of the Illinois Governor (EIGG) is under a statutory duty to notify the individual board of trustees of the specific State university or community college whose officer or employee is the subject of an investigation of the general nature of the allegation or information giving rise to the investigation and the reasons for the EIGG's failure to complete that particular investigation within six months. Accordingly, the EIGG does not satisfy his duty to report overage investigations to the appropriate ultimate jurisdictional authority by simply distributing a single overage report to the boards of trustees of all of the State's universities and community colleges. 5 ILCS 430/20-65 (West 2006).

**Opinion No. 07-002
Issued December 24, 2007**

Public Access to Search Warrant Information Prior to the Final Disposition of a Case

Complaints for search warrants, accompanying affidavits or other evidence in support thereof, and the warrants themselves are subject to public inspection pursuant to section 16 of the Clerks of Courts Act once the warrants have been returned to the court. There is no statutory or other authority that permits a circuit clerk to unilaterally seal or impound complaints for search warrants, affidavits, or the search warrants themselves. Absent a court order otherwise providing, therefore, circuit clerks must make these documents available to the public. 5 ILCS 140/1 et seq. (West 2006); 705 ILCS 105/16 (West 2006); 725 ILCS 5/108-4 (West 2006), as amended by Public Act 95-331, effective August 21, 2007.

**Opinion No. 07-003
Issued December 26, 2007**

Applicability of the Local Records Act to the Records of County Election Commissions

Except as may be otherwise pro-

vided by law, county election commissions are subject to and must comply with the Local Records Act if destroying or otherwise disposing of the public records in their custody. Nothing in the Federal or State election laws exempts county election commissions from satisfying the Local Records Act's requirements with regard to public records, including election materials, in their possession. 50 ILCS 205/3, 4, 7 (West 2006); 42 U.S.C. §1974 (2000).

**Informal Opinion No. I-07-051
Issued November 1, 2007**

Conflict of Interest—Firefighter or Paramedic Serving as Fire Protection District Trustee

Section 4 of the Fire Protection District Act generally prohibits fire protection district trustees from having a personal pecuniary interest in any contract entered into by the fire protection district beyond the minimal contract amounts set forth therein, including contracts between a fire protection district and a firefighter or paramedic for services as such. However, section 12 of the Local Governmental Employees Political Rights Act authorizes members of fire protection districts or fire departments to serve in any elected or appointed public office, including the office of fire protection district trustee. Therefore, construing the two statutory provisions together, a firefighter or paramedic may serve as a fire protection district trustee, but he or she must abstain from voting on matters relating to his or her compensation or benefits received from the fire protection district. 50 ILCS 135/12 (West 2006), as amended by Public Act 95-142, effective August 13, 2007; 70 ILCS 705/4 (West 2006).

**Informal Opinion No. I-07-053
Issued December 6, 2007**

Liens on Property for Fines and Costs of Prosecution

Section 124A-10 of the Code of Criminal Procedure of 1963 applies to all criminal offenses, whether classified as felonies or misdemeanors but not juvenile court proceedings. For purposes of section 124A-10, a court-ordered payment schedule is implemented upon entry of the court order. A certified copy of a judgment

is an actual copy of the judgment order, signed and certified as true. Delinquency percentage rates should be applied only to the original judgment amount and should not be calculated on a cumulative or compounded basis, nor should delinquency rates be applied to restitution that may be ordered by the court. Notice to those assessed delinquency charges is required, but personal or actual notice is not necessary. At the defendant's request, the State's Attorney should prepare and the clerk should record a release of lien once full payment has been made. Any administrative costs incurred by the clerk of the court in collecting unpaid judgment balances may be covered by the additional amounts collected. 705 ILCS 105/16 (West 2006); 725 ILCS 5/102-15, 124A-5, 124A-10 (West 2006); 730 ILCS 5/5-5-6 (West 2006), as amended by Public Act 95-331, effective August 21, 2007; 735 ILCS 5/12-183 (West 2006).

**Informal Opinion No. I-07-054
Issued December 13, 2007**

"Additional Corporate Tax" Levy by a Park District Subject to the Property Tax Extension Limitation Law

Park districts that are subject to the Property Tax Extension Limitation Law (PTELL) and that have never levied for the additional tax authorized by section 5-3 of the Park District Code must obtain referendum approval in accordance with section 18-190 of PTELL in order to levy the additional tax. 35 ILCS 200/18-190 (West 2006); 70 ILCS 1205/5-3 (West 2006).

**Informal Opinion No. I-07-055
Issued December 13, 2007**

Amendment of County Zoning Ordinance

(1) A county may not effectuate a comprehensive rezoning through the adoption of a single map amendment. (2) A county may use overlay zoning as long as the restrictions imposed in an overlay district do not exceed the county's general zoning authority. (3) A county may use its zoning ordinance to protect natural areas and wildlife habitat, prevent pollution, conserve natural resources, and preserve scenic beauty without the adoption of a Land Resource Management Plan. (4) A

non-home-rule county's zoning ordinance may not authorize private parties to convey development rights from one parcel to another. (5) Although a full legal description of the property included in a map amendment is not specifically required, it is advisable to use the legal description. (6) Although a full legal description of the property included in a text amendment is not specifically required, it is likewise advisable to use the legal description. (7) Any municipality that has a zoning ordinance in effect and shares a boundary with the land to be rezoned by the county has protest rights under section 5-12014 of the Counties Code, regardless of whether the municipality's property is significantly affected by a text amendment. (8) Under section 5-12014 of the Counties Code, acreage and perimeters of non-contiguous parcels should be considered together in determining protest rights. (9) When property in more than one township is affected by a single map amendment, a hearing should be held in one township, recessed, and then reconvened in the other township. 50 ILCS 805/1, 2, 4 (West 2006); 55 ILCS 5/5-12014 (West 2006).

**Informal Opinion No. I-07-056
Issued December 28, 2007**

Immunity and Indemnification of Hospital Personnel Assisting Law Enforcement Officers With Blood Tests of DUI Suspects

Hospital personnel who draw blood samples from individuals who are arrested for or suspected of violating section 11-501 of the Illinois Vehicle Code, the statutory provision addressing driving while under the influence of alcohol, other drugs, or intoxicating compounds, may be entitled to civil immunity under section 11-500.1 of the Illinois Vehicle Code, depending on the particular facts and circumstances of a given situation. Hospital personnel in the circumstances indicated above are not entitled to representation and indemnification under the State Employee Indemnification Act, unless they constitute "State employees" as that term is used in the Indemnification Act and depending on the particular facts and circumstances of the situation. Whether section 11-501 of the Illinois Vehicle Code or the State Employee Indemnification Act applies will require a case-by-case analysis of the facts

unique to each hospital staff member and the surrounding circumstances. Hospital personnel in the circumstances set out above are not entitled to civil immunity under section 107-8 of the Code of Criminal Procedure of 1963. 5 ILCS 350/0.01 et seq. (West 2006); 625 ILCS 5/11-500.1 (West 2006); 725 ILCS 5/107-8 (West 2006).

**Informal Opinion No. I-07-057
Issued December 28, 2007**

Validity of a Home Rule Tax on Fountain Soft Drinks

Section 8-11-6b of the Illinois Municipal Code generally preempts the authority of home rule municipalities to impose a separate, stand-alone tax on soft drinks. However, home rule municipalities may impose a tax on soft drinks to the extent that soft drinks properly fall within a category of taxes which a municipality is authorized to levy on a general category of food, beverages, other goods, or tangible personal property. 65 ILCS 5/8-11-6a (West 2006), as amended by Public Act 95-544, effective August 28, 2007; 65 ILCS 5/8-11-6b (West 2006).



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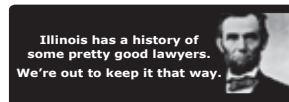
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Standing Committee on Government Lawyers
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March 2008
Vol. 9 No. 3