



ILLINOIS STATE
BAR ASSOCIATION

STANDING COMMITTEE ON GOVERNMENT LAWYERS

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

(Notice to librarians: The following issues were published in Volume 5 of this newsletter during the fiscal year ending June 30, 2004: August No. 1; November, No. 2; December, No. 3; March, No. 4; June No. 5).

**Get the electronic
version of this
newsletter**
See page 16 for details.

Attorney General's office issues opinions on the State Officials and Employees Ethics Act*

By Lynn Patton, Springfield

Attorney General Lisa Madigan's office recently issued two opinions regarding the implementation of the new State Officials and Employees Ethics Act (added by Public Act 93-615, effective November 19, 2003, as amended by Public Act 93-617, effective December 9, 2003, to be codified at 5 ILCS 430/1-1 *et seq.*). In opinion No. 04-002, issued March 30, 2004, to John Keith, Chairman of the State Board of Elections, Attorney General Madigan addressed the applicability of the State Officials and Employees Ethics Act and the Lobbyist Registration Act to the State Board of Elections. Informal opinion No. I-04-009, issued June 17, 2004, to Letitia Dominici, Deputy General Counsel for the Illinois Department of Central Management Services, discusses the application of the State Officials and

Employees Ethics Act to certain discounts offered by vendors that have entered into contracts with State agencies, when the discounts are offered to State employees to be used for purchasing goods or services for their personal use. The complete text of the two opinions follows.

Opinion No. 04-002, issued March 30, 2004

Dear Mr. Keith:

I have General Counsel Colleen Burke's letter wherein she inquired, on behalf of the State Board of Elections, whether the provisions of section 5-55 of the recently enacted State Officials and Employees Ethics Act (added by Public Act 93-615, effective November 19, 2003, as amended by Public Act 93-617, effective December 9, 2003, to be codified at 5 ILCS 430/5-55) and new section 3.1 of the Lobbyist Registration Act (added by Public Act 93-615, effective November 19, 2003, as amended by Public Act 93-617, effective December 9, 2003, to be codified at 25 ILCS 170/3.1) are applicable to the members of the State Board of Elections. Section 5-55 of the State Officials and Employees Ethics Act prohibits persons with significant interests in State contracts, their spouses and immediate family members living with those persons from serving

"on a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor." Section 3.1 of the Lobbyist Registration Act contains a similar prohibition which is applicable to lobbyists and their immediate families. For the reasons stated below, it is my opinion that members of the State Board of Elections are subject to the provisions of section 5-55 of the State Officials and Employees Ethics Act and section 3.1 of the Lobbyist Registration Act.

Enacted by the General Assembly as part of a comprehensive ethics reform package designed to apply to all public officers and public employees, the State Officials and Employees Ethics Act was intended, among other things, to ensure the integrity of the State's boards and commissions by prohibiting lobbyists and individuals with personal financial interests in State contracts from serving on the State's numerous boards and commissions. Accordingly, section 5-55 of the State Officials and Employees Ethics Act provides:

Prohibition on serving on boards and commissions. Notwithstanding any other law of this State, on and after February 1, 2004, a person, his or her spouse, and any immediate family member living with that person is ineligible to serve on a board,

IN THIS ISSUE

- Attorney General's Office Issues Opinions on the State Officials and Employees Ethics Act 1
- Someone you should know: David Koski 5
- Case law update 7

commission, authority, or task force *authorized or created by State law or by executive order of the Governor* if (i) that person is entitled to receive more than 7 1/2 percent of the total distributable income under a State contract other than an employment contract or (ii) that person together with his or her spouse and immediate family members living with that person are entitled to receive more than 15 percent in the aggregate of the total distributable income under a State contract other than an employment contract; except that this restriction does not apply to any of the following:

- (1) a person, his or her spouse, or his or her immediate family member living with that person, who is serving in an elective public office, whether elected or appointed to fill a vacancy; and
- (2) a person, his or her spouse, or his or her immediate family member living with that person, who is serving on a State advisory body that makes nonbinding recommendations to an agency of State government but does not make binding recommendations or determinations or take any other substantive action. (Emphasis added).

Similarly, section 3.1 of the Lobbyist Registration Act provides:

Prohibition on serving on boards and commissions. Notwithstanding any other law of this State, on and after February 1, 2004, but not before that date, a person required to be registered under this Act, his or her spouse, and his or her immediate family members living with that person may not serve on a board, commission, authority, or task force *authorized or created by State law or by executive order of the Governor*; except that this restriction does not apply to any of the following:

- (1) a registered lobbyist, his or her spouse, or any immediate family member living with the registered lobbyist, who is serving in an elective public office, whether elect-

ed or appointed to fill a vacancy; and

- (2) a registered lobbyist, his or her spouse, or any immediate family member living with the registered lobbyist, who is serving on a State advisory body that makes nonbinding recommendations to an agency of State government but does not make binding recommendations or determinations or take any other substantive action. (Emphasis added).

The prohibitions contained in section 5-55 of the State Officials and Employees Ethics Act and section 3.1 of the Lobbyist Registration Act are clear; the ultimate issue is whether the State Board of Elections constitutes "a board * * * authorized or created by State law," for purposes of these provisions. The phrase "authorized or created by State law" is not defined in either the State Officials and Employees Ethics Act or the Lobbyist Registration Act. It will be necessary, therefore, to determine the meaning to be given to the phrase.

Turning first to the phrase "State law," although the word "law" may be broadly or narrowly interpreted depending on its context (*In re Cameron T.*, 949 P.2d 545, 550 (Ariz. Ct. App. 1997)), the term "law" generally includes constitutions, statutes, the common law and the various rules which the courts or administrative agencies from time to time adopt. See, e.g., *People v. Cornille*, 136 Ill. App. 3d 1011, 1016 (1985); *Gorton v. American Cyanamid Co.*, 533 N.W.2d 746, 751 (Wis. 1995), cert. denied, 516 U.S. 1067, 116 S. Ct. 753 (1996); *State ex rel. Conway v. Superior Court*, 131 P.2d 983, 986 (Ariz. 1942), overruled in part on other grounds, 247 P.2d 617 (Ariz. 1952); *In re Cameron T.*, 949 P.2d at 550 (Ariz. Ct. App. 1997). Likewise, the word "create" commonly means "[t]o bring into being; to cause to exist; to produce; to make, for example, a machine or a corporation." Ballentine's Law Dictionary 287 (3rd ed. 1969); see also Webster's Third New International Dictionary of the English Language Unabridged 532 (1993). Based upon the commonly understood meaning of the foregoing words and because of the General Assembly's intent to adopt an act applicable to all public officers and public employees, it is my opinion that the phrase "created by State law" in this context refers to those bodies that have been established or oth-

erwise provided for by the Illinois Constitution or by Illinois statute.

The State Board of Elections is provided for in article III, section 5 of the Illinois Constitution of 1970, which simply states:

A State Board of Elections shall have general supervision over the administration of the registration and election laws throughout the State. The General Assembly by law shall determine the size, manner of selection and compensation of the Board. No political party shall have a majority of members of the Board.

Clearly, article III, section 5 of the Constitution is a mandate to the General Assembly both to create a State Board of Elections and to enact legislation that addresses the membership of and other details pertinent to the operation of the State Board of Elections. Consequently, because the State Board of Elections is provided for in the Constitution, and thereby a board "created by State law," it is my opinion that the members of the State Board of Elections are subject to the provisions of section 5-55 of the State Officials and Employees Ethics Act and section 3.1 of the Lobbyist Registration Act.

Even assuming, *arguendo*, that the State Board of Elections is not a board created by the Illinois Constitution, it is clear that the State Board of Elections would constitute a board created by State statute. In accordance with the constitutional mandate, the General Assembly has enacted legislation that establishes the State Board of Elections and addresses the membership of and other details pertinent to the operation of the Board. 10 ILCS 5/1A-1 *et seq.* (West 2002). Specifically, section 1A-1 of the Election Code (10 ILCS 5/1A-1 (West 2002)) provides:

A State Board of Elections is hereby established which shall have general supervision over the administration of the registration and election laws throughout the State, and shall perform only such duties as are or may hereafter be prescribed by law. (Emphasis added).

In opinion No. S-372, issued December 16, 1971 (1971 Ill. Att'y Gen. Op. 140), Attorney General Scott was asked to determine the status of the State Electoral Board, the predecessor to the State Board of Elections, because the General Assembly had not enacted any law relating to "the size, manner of selec-

tion and compensation" of the State Board of Elections or otherwise provided for its activation prior to the effective date of article III, section 5 of the Illinois Constitution. In concluding that the State Electoral Board would continue to function "[u]ntil such time as there is an existing and functioning State Board of Elections" (1971 Ill. Att'y Gen. Op. at 142), Attorney General Scott stated, "[t]he essential question is whether said [article III,] Section 5 [of the Illinois Constitution] is self-executing. It is my considered judgment that it is not self-executing and, pending action of the General Assembly, the State Board of Elections, even though named in the Constitution, will be without legal existence and without effect on the status of the State Electoral Board. * * * It seems obvious that a State Board of Elections will not exist either *de jure* or *de facto* until its members have been selected, its size set and other factors effecting its viability, have been determined, all by legislative enactment of the General Assembly." 1971 Ill. Att'y Gen. Op. at 141.

It is clear from Attorney General Scott's opinion that although the Constitution requires the creation of the State Board of Elections, the Board actually came into existence only upon the General Assembly's passage of legislation specifying the membership of the Board, the manner of selection of the Board's members and their compensation.

Ms. Burke's letter notes that section 1A-1 of the Election Code uses the word "established" with respect to the origins of the State Board of Elections and not the term "created." The term "establish" ordinarily means "[t]o originate, to create; to found and set up; to put or fix on a firm basis; to put in a settled or efficient state or condition." Ballentine's Law Dictionary 417 (3rd ed. 1969); see also Webster's Third New International Dictionary of the English Language Unabridged 778 (1993). Applying the commonly understood meaning of the term "establish," it is my opinion that in enacting the language of section 1A-1 of the Election Code, the General Assembly has "created" the State Board of Elections "by State law."

For the reasons set forth above, it is my opinion that regardless of whether the State Board of Elections is characterized as having been created by the Illinois Constitution or by Illinois statute, the Board has been "created by State law," for purposes of section 5-55

of the State Officials and Employees Ethics Act and section 3.1 of the Lobbyist Registration Act. As a result, its members are subject to the prohibitions contained therein.

Very truly yours,
LISA MADIGAN
Attorney General

Informal Opinion No. I-04-009, issued June 17, 2004

Dear Ms. Dominici:

I have your letter wherein you pose several questions regarding the application of the State Officials and Employees Ethics Act (added by Public Act 93-615, effective November 19, 2003, as amended by Public Act 93-617, effective December 9, 2003, to be codified at 5 ILCS 430/1-1 *et seq.*) to certain discounts (e.g., a reduced price on computers or wireless telephone service) offered by vendors that have entered into contracts with State agencies, when the discounts are offered to State employees to be used for purchasing goods or services for their personal use unrelated to their State employment. Specifically, you have inquired: (1) whether a discount on goods or services provided to State employees constitutes a "gift," as that term is used in the State Officials and Employees Ethics Act; (2) whether a vendor is a "prohibited source," as that term is used in the State Officials and Employees Ethics Act, with respect to those State employees who possess the authority to approve the purchase of equipment from the vendor pursuant to a master contract; (3) whether a vendor is a "prohibited source" with respect to a State employee who uses equipment purchased from the vendor pursuant to a master contract; and (4) if a discount does constitute a gift from a prohibited source and the discount exceeds \$100 within a calendar year, whether such a discount falls within any of the exceptions set out in the State Officials and Employees Ethics Act, thereby allowing the employee to accept the discount. Because of the nature of your inquiry, I do not believe the issuance of an official opinion is necessary. I will, however, comment informally upon the questions you have raised.

Enacted by the General Assembly as part of a comprehensive ethics reform package, the State Officials and Employees Ethics Act (hereinafter the "Ethics Act") generally prohibits State officers, General Assembly members and State employees from accepting gifts

from "prohibited sources," as defined in the Ethics Act. Specifically, section 10-10 of the Ethics Act (to be codified at 5 ILCS 430/10-10) provides:

[e]xcept as otherwise provided in this Article, no officer, member, or State employee shall intentionally solicit or accept any gift from any prohibited source.

The term "employee" is defined in section 1-5 of the Ethics Act (to be codified at 5 ILCS 430/1-5) to refer to:

(i) any person employed full-time, part-time, or pursuant to a contract and whose employment duties are subject to the direction and control of an employer with regard to the material details of how the work is to be performed or (ii) any appointee.

Similarly, the phrase "State employee" is defined in section 1-5 of the Ethics Act to include "any employee of a State agency."

Against this background, you have inquired, first, whether a discount on goods or services provided by a State vendor to a State employee, to be used when acquiring goods or services for his or her personal use, constitutes a "gift," as that term is used in the Ethics Act. Section 1-5 of the Ethics Act defines the term "gift" to include:

any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements *related to or attributable to government employment* or the official position of an employee, member, or officer. (Emphasis added).

Where statutory language is clear and unambiguous, it must be given effect as written. *Land v. Board of Education*, 202 Ill. 2d 414, 426 (2002). Under the language quoted immediately above, it is clear that the General Assembly, by express provision, has determined that the word "gift" includes discounts. Consequently, a discount on goods or services offered to State employees by a vendor with a State contract constitutes a "gift," as that term is used in the Ethics Act.

Second, you have inquired whether a vendor which has one or more State contracts is a "prohibited source," as that term is used in the Ethics Act, with respect to those State employees who

possess the authority to approve the purchase of goods or services from the vendor pursuant to a master contract executed with the State. You have indicated that the vendors which are the focus of your inquiry each have an existing contractual relationship with the State through the execution of a "master contract" with the Department of Central Management Services. Under the Department of Central Management Services' procurement rules, the chief procurement officer may establish a "master contract," a contract with a vendor that may be utilized by other State agencies in the procurement of goods and services. 44 Ill. Adm. Code §1.1040 (January 31, 2003).

Section 1-5 of the Ethics Act defines the phrase "prohibited source" to refer to any person or entity which, among other things:

- (2) does business or seeks to do business (i) with the member or officer or (ii) in the case of an employee, *with the employee or with the member, officer, State agency, or other employee directing the employee.* (Emphasis added).

Under the provisions of section 1-5 of the Act, a vendor is a "prohibited source" with respect to an employee if the vendor "does business or seeks to do business" with a State employee or with the State agency or another employee directing the State employee. Direct involvement by the State employee in the execution or administration of the contract is not required. Under the plain language of the statutory definition, a vendor constitutes a prohibited source when it "does business or seeks to do business * * * in the case of an employee, with the employee." A State employee who possesses the authority to approve, on behalf of a particular State agency, the purchase of goods or services from a vendor pursuant to a master contract would be someone with whom the vendor either "does business or seeks to do business." Thus, a vendor would be a "prohibited source," as that term is used in the Ethics Act, with respect to State employees who have the authority to approve the purchase of goods or services through a master contract with the vendor.

Your third inquiry concerns whether a vendor constitutes a "prohibited source" within the provisions of the Ethics Act, with respect to a State employee who, within the scope of his or her State employment, uses equipment sold by such vendor pursuant to a

master contract. Under the plain language of the definition of "prohibited source," a vendor that provides goods or services to a State agency pursuant to a master contract would be "do[ing] business * * * in the case of an employee, with the * * * State agency * * * directing the employee." Consequently, a vendor that provides goods or services to a State agency under a master contract executed with the State would constitute a "prohibited source" for all the agency's employees.

In reaching this conclusion, it is important to note both the plain, broad language of the Ethics Act and the history of this statute. The Ethics Act was enacted amidst a scandal that produced dozens of Federal and State corruption convictions of former State employees for accepting bribes and improperly awarding lucrative government contracts and leases to benefit their own personal interests. Thus, the Ethics Act was enacted, at least in part, to address the ethical indiscretions of those State employees who are in a position to award State contracts and those State employees whose direct or supervisory involvement in the purchasing or procurement process would provide the opportunity for malfeasance. The current language of the statute, however, does not permit an interpretation which is limited to those individuals. Rather, it bars all employees of a contracting State agency from accepting a gift from a prohibited source.

Last, you have inquired whether any of the exceptions set out in section 10-15 of the Ethics Act (to be codified at 5 ILCS 430/10-15) would permit a State employee to accept a discount on goods or services from a prohibited source, if the value of the discount exceeds \$100 within a calendar year. Section 10-15 sets out 12 exceptions to the Ethics Act's gift prohibitions and provides, in pertinent part:

The restriction in Section 10-10 does not apply to the following:

- (1) Opportunities, benefits, and services that are available on the same conditions as for the general public.
- (2) Anything for which the officer, member, or State employee pays the market value.
- (3) Any (i) contribution that is lawfully made under the Election Code or under this Act or (ii) activities associated with a fundraising event in support of a political

organization or candidate.

- (4) Educational materials and missions. This exception may be further defined by rules adopted by the appropriate ethics commission or by the Auditor General for the Auditor General and employees of the Office of the Auditor General.
- (5) Travel expenses for a meeting to discuss State business. This exception may be further defined by rules adopted by the appropriate ethics commission or by the Auditor General for the Auditor General and employees of the Office of the Auditor General.
- (6) A gift from a relative, meaning those people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of the individual's spouse and the individual's fiancé, or fiancée.
- (7) Anything provided by an individual on the basis of a personal friendship unless the member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the member, officer, or employee and not because of the personal friendship.
* * *
- (8) Food or refreshments not exceeding \$75 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared or (ii) catered. For the purposes of this

Section, "catered" means food or refreshments that are purchased ready to eat and delivered by any means.

- (9) Food, refreshments, lodging, transportation, and other benefits resulting from the outside business or employment activities (or outside activities that are not connected to the duties of the officer, member, or employee as an office holder or employee) of the officer, member, or employee, or the spouse of the officer, member, or employee, if the benefits have not been offered or enhanced because of the official position or employment of the officer, member, or employee, and are customarily provided to others in similar circumstances.
- (10) Intra-governmental and inter-governmental gifts. For the purpose of this Act, "intra-governmental gift" means any gift given to a member, officer, or employee of a State agency from another member, officer, or employee of the same State agency; and "inter-governmental gift" means any gift given to a member, officer, or employee of a State agency, by a member, officer, or employee of another State agency, of a federal agency, or of any governmental entity.
- (11) Bequests, inheritances, and other transfers at death.
- (12) Any item or items from

any one prohibited source during any calendar year having a cumulative total value of less than \$100.

Your question assumes that the amount of the discount offered by the State vendor exceeds \$100 per calendar year. Therefore, the provisions of subsection 10-15(12) are of little assistance in resolving your inquiry.

Subsection 10-15(1) of the Ethics Act permits State officials and employees to accept opportunities, benefits and services that are available to the general public on the same terms as those provided to the general public. Implicit within the language of subsection 10-15(1) is a limitation on State employees accepting discounts offered solely based upon their status as government employees. For example, if a prohibited source offered a \$200 discount on the purchase of a computer to someone because he or she is a State employee, that opportunity would not fall within the provisions of subsection 10-15(1) of the Act. Rather, that discount is precisely the type of benefit that the language of section 10-10 of the Act is intended to prohibit. Conversely, if the prohibited source offered a \$200 discount to every person ordering a computer through its Web site, the discount would fall within the provisions of subsection 10-15(1) of the Act and the State employee could take advantage of that offer. Therefore, before a State employee may accept a discount from a prohibited source it will be necessary to determine whether the opportunity is being provided to the State employee because of his or her position with the State or whether the discount is available to the general public on similar terms. If the discounts are offered to the general public or to a segment of the general public and the State employee is a member of that

group, irrespective of his or her employment with the State, then under the language of subsection 10-15(1) of the Act, the State employee would not be precluded from accepting the discount merely because of his or her State position. If, however, a discount is being offered only to State employees, subsection 10-15(1) would not except such an opportunity from the general gift prohibition.

Similarly, subsection 10-15(2) of the Ethics Act permits a State employee to undertake the purchase of an item, if the employee pays the market value for the good. If a State employee is being offered a discount on a product, then he or she would necessarily be paying less than the normal selling price or the market value for that product. Consequently, such a discount is not excepted from the Act's prohibitions by subsection 10-15(2) thereof.

The remaining exceptions also do not appear to be applicable to the circumstances you have described.

Based upon the foregoing, the Ethics Act precludes a State employee from accepting a discount on goods or services from a prohibited source, where the value of the discount equals or exceeds \$100 in a calendar year and where the discount is extended solely based upon the individual's status as a State employee.

This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.

Very truly yours,
LYNN E. PATTON
Senior Assistant Attorney General
Chief, Opinions Bureau

*This article was originally published in the ISBA's Local Government Law newsletter, July 2004, Vol. 41, No. 1 and is reprinted with permission.

Someone you should know: David Koski

By John Gibbons, Rockford

In early May 2004, a staff meeting was held for the employees of the Winnebago County State's Attorney's Office. The meeting was titled simply "LAK," an acronym for Life After Koski. The topic of the meeting was the transition that would occur within the Winnebago County State's Attorney's Office subsequent to the retirement of First Deputy State's Attorney David "Dave" Koski in August 2004, after 32

years of service. Although the purpose of the meeting may have been to look to the office's future, life in the past at the State's Attorney's Office under Koski's guidance was the epitome of professionalism, efficient management, and team-oriented skills training.

Dave Koski was born in DeKalb, Illinois, and moved to Kankakee at the age of 12. In high school, Koski had not yet entertained the thought of a career

in law and was focusing more on the studies of math and chemistry. While in high school, he played on the tennis team and earned money at a job with a local photography studio.

Following graduation from high school, Koski enrolled at Purdue University with plans to major in chemistry. It was in his undergraduate studies that Koski began to move away from the science and math track and focus on

Standing Committee on Government Lawyers

Published at least four times per year.

To subscribe, visit www.isba.org or
call (217) 525-1760

OFFICE

Illinois Bar Center
424 S. 2nd Street
Springfield, IL 62701

Phones: (217) 525-1760 OR 800-252-8908

Web site: www.isba.org

Co-Editors

Kathryn Ann Kelly
219 S. Dearborn, Suite 500
Chicago, 60606

Lynn Patton
500 S. Second St.
Springfield, 62706

Managing Editor/Production

Katie Underwood
kunderwood@isba.org

Standing Committee on Government Lawyers

Kate A. Kelly, *Chair*
Cynthia I. Ervin, *Vice-Chair*
Nancy G. Easum, *Secretary*
Marc C.A. Loro, *Ex-Officio*

Galen T. Caldwell
Thomas J. Carlisle
Patrick T. Driscoll
Patrick J. Hughes
Elizabeth L. Jensen
Rosalyne B. Kaplan
Paul A. Logli
Jane E. McBride
Marina C. Para
Lynn A. Patton
Richard N. Porter
Lee Ann Schoeffel

John Edward Thies, *Board Liaison*
Janet M. Sosin *Staff Liaison*

Disclaimer: This newsletter is for subscribers' personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

POSTMASTER: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.

English and social sciences. Koski's activities while an undergraduate included membership in Lambda Chi Alpha fraternity, where he served as president for one year, and major involvement in the Wesley Foundation, which provided him with the opportunity to serve a term as state president of Methodist Campus Ministries. Koski graduated with a degree in English from Purdue University in 1966. He then enrolled in law school at the University of Illinois, where he paid his tuition through work as a resident hall advisor.

After graduating from law school, Koski decided to take a non-legal job with the Chicago advertising firm Leo Burnett. His acceptance of the advertising job was due to his indecision over what to do with his law degree and his anticipation that he would be drafted into the armed services.

As expected, Koski was drafted into the Army in April 1970 and reported to basic training at Fort Campbell, Kentucky. The Army assigned him to the Judge Advocate's Office, where he served state-side as a judicial advocate until he was honorably discharged in 1971.

With his military duty satisfied, Koski began his search for a legal job. Responding to an ad in the *Illinois Bar Journal* placed by then Winnebago County State's Attorney Phillip Reinhard, Koski began his career as an Assistant State's Attorney for Winnebago County on January 3, 1972.

Koski's first assignment was to the misdemeanor unit. Within his first year in the office, Koski had written two appellate briefs and had argued one case before the Second District Appellate Court. His second appellate argument fell on a day in early 1973 when a blizzard hit northern Illinois. Koski recalled that he made the trek to Elgin in a Volkswagen Beetle, only to find that the defense waived oral argument.

As his work progressed at the State's Attorney's Office, Koski quickly grew to take pleasure in the job and knew early on that he would make it his career. Koski points out that he never considered leaving the office in over 32 years and never sent a resume elsewhere. Koski reveals, however, that early in his career he entertained the thought of prosecuting in northern Wisconsin where (alluding to his favorite pastime) the fishing is better. By his third year in the office, Koski had married his wife, Gail. They would raise four children, Lisa, John, Katie, and Daniel.

In his third year with the State's Attorney's Office, Koski moved to the felony unit. While in that unit, Koski

quickly became one of the lead trial attorneys. From 1974 to 1988, Koski's focus was strictly jury trials. He tried over 150 jury trials during this period, encompassing violent crimes to inchoate crimes and including more than 20 murder trials. Koski was lead or co-counsel on most of Winnebago County's highest-profile criminal cases in the last 30 years, including the trial of mass-murderer Raymond Lee Stewart and the trials of the murderers of slain Rockford Police Officers Randall Blank and Kevin Rice. Although Koski will not admit to it, any of his peers will quickly tell you that he is a legendary trial attorney in Winnebago County.

After 14 years of felony trial work, Koski began the second half of his career at the State's Attorney's Office in 1988 when Winnebago County State's Attorney Paul Logli implemented new policies and management procedures in the office to deal with the rapidly growing case load and the need for more continuing legal education for the office's attorneys. Logli promoted Koski to the position of First Deputy State's Attorney, and Koski transitioned from full-time lead trial attorney to full-time manager, educator, and team leader of the office's continually growing number of attorneys. Koski stated, "one of the highlights of my career has been the implementation of quality control concepts for attorneys in our office." Koski is known for his dedication in training young lawyers by focusing on the value of constantly enhancing their trial skills through development and design of a trial plan.

Koski has worked with over 200 attorneys at the Winnebago County State's Attorney's Office during his career. He has trained almost all of the current attorneys at the office and states that he is very proud of the way his subordinates show "equality in the treatment of defendants." Koski takes great pride in the office and lauds his co-workers. "One of the more fulfilling aspects of work at the Winnebago County State's Attorney's Office is the team atmosphere." Koski goes on to say, "I will miss the collaboration with the attorneys and the sense of feeling that I am part of the team."

When asked about his lasting impact on the State's Attorney's Office, Koski hopes it will be that his interaction with attorneys helped them to approach legal issues fairly and to seek justice in a fair manner. He points to a great history of integrity at the Winnebago County State's Attorney's Office and is proud to have worked for three different State's Attorneys who have upheld that integrity. He further notes that prosecutors, as a profession, are continually under an

unfair assault in the media, and the only way to counter this is through setting an example of equality and veracity.

Koski states that he is leaving the office in order to take advantage of retirement and "not because work is no longer enjoyable." Although Koski's service to the community for over 32 years as a prosecutor is admirable, he hopes to continue his service at Roscoe

United Methodist Church where he has been chairman of the administrative board, building committee, and finance committee, as well as a member of the choir. Koski also plans on traveling with his wife and indulging in his two favorite pastimes, fishing and reading.

"Dave Koski has been a prosecutor's prosecutor," says Winnebago County State's Attorney Paul Logli. "He has also

enjoyed the respect of local lawyers and judges as a considerate and decent person. I have no doubt he could have left this office and accepted an appointment to the local bench and made more money with less stress. Instead, he has done a job that nobody else could have done as well. The People could not have had a better representative and advocate. We will miss him."

Case law update

By Lee Ann Schoeffel, Springfield

Administrative law

Arvia v. Madigan, No. 95590 (April 15, 2004). Although facial challenge to "zero tolerance law" (625 ILCS 5/11-501.8 (West 2000)) does not require exhaustion of administrative remedies and is not waived by failure to file administrative review of decision by the Secretary of State to deny motion to rescind summary suspension of plaintiff's driver's license, trial court erred when it held that law violates due process and equal protection. Hearings by Secretary of State are not inherently biased. Persons under the age of 21 charged with a traffic offense are not similarly situated with persons over the age of 21 who are charged with DUI.

Sleeter v. Industrial Comm'n, No. 4-02-1044WC (4th District, March 3, 2004). Because the Illinois Industrial Commission exercises original, rather than appellate jurisdiction, decision in which Commission reverses award of arbitrator is subject to no greater scrutiny than decision in which it affirms. Therefore, Commission properly reversed award of arbitrator and denied worker's compensation benefits to claimant, finding that claimant's testimony with regards to accident was not credible, being inconsistent with more reliable medical notations made in connection with treatment of claimant for alleged injuries. In addition, claimant's assertion that decision of Commission is void, because Senate transcript does not clearly demonstrate that Commissioner Madigan has requisite labor relations experience, is without merit because qualification of commissioner is determination made by Governor.

Illinois RSA No. 3, Inc. v. Department of Central Management Services, No. 1-02-3420 (1st District, March 9, 2004). Department of Central Management

Services' rule that allows wireless telephone carriers to recover no more than 100 percent of a surcharge collected by carrier to defray the carrier's expenses in establishing 9-1-1 emergency service directly conflicts with the authorizing statute, the Wireless Emergency Telephone Safety Act (50 ILCS 751/1 *et seq.* (West 2002)), which provides for reimbursement for up to 125 percent of amount actually collected, and is therefore invalid, being beyond regulatory authority created by statute.

County of Cook v. Illinois Labor Relations Board Local Panel, No. 1-03-0073, 1-03-0074 Cons. (1st District, March 17, 2004). State's Attorney's appeal for review of decision by State Panel of Illinois Labor Relations Board was properly dismissed because it failed to name the State panel as a respondent.

Gusciara v. Lustig, No. 2-03-0310 (2nd District, March 26, 2004). Chief Legal Counsel abused her discretion when she dismissed part of plaintiff's complaint for sexual harassment based on violation of 180-day limitations period of 7A-102(A)(1) of the Illinois Human Rights Act (775 ILCS 5/7A-102(A)(1) (West 2000)), because petitioner alleged one continuous series of sexual harassment describing single claim of hostile work environment, the last two acts occurring within the limitations period. Acts alleged within limitations period were committed by same person as previous acts and within a few months.

American Federation of State, County & Municipal Employees v. Ryan, No. 5-02-0719 (5th District, April 6, 2004). Although private individuals lack standing to file suit to enjoin closure by State of a civil mental health facility without obtaining permit pursuant to Illinois Health Facilities Planning Act (20 ILCS 3960/1 *et seq.* (West 2002)), the State's Attorney of the county in which a facility is located

may bring such an action. Further, sovereign immunity does not protect the State from compliance with the Act. Therefore, trial court properly granted injunction prohibiting closure without first applying for and obtaining a permit from the Health Facilities Planning Board.

Meehan v. Illinois Power Co., No. 5-03-0289 (5th District, April 12, 2004). Circuit court lacked subject matter jurisdiction to consider plaintiff's age discrimination complaint brought under federal Age Discrimination in Employment Act of 1967 (29 U.S.C. §621 *et seq.* (2000)) statute. The Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.* (West 2002)) provides the exclusive remedy for discrimination claims in Illinois, and the circuit courts lack jurisdiction to consider original complaint of discrimination, even pursuant to federal statute.

Mina v. Board of Education for Homewood-Flossmoor, Community High School District 233, No. 1-03-1532 (1st District, April 23, 2004). Trial court erred when it concluded that determination by school board that plaintiff's child was not a resident of the school district during school term was clearly erroneous. Testimony before hearing officer established that parents' declared intent to reside in home that they purchased within school district was contradicted by their conduct of purchasing home outside of district where their mail was forwarded and where their child spent her nighttime hours. Therefore, district could charge tuition for subject school year.

Collinsville Community Unit School District No. 10 v. Regional Board of School Trustees, No. 5-02-0670 (5th District, May 11, 2004). Trial court lacked jurisdiction to consider administrative review of order detaching certain area from one school district and attach-

ing it to adjacent district, because school districts failed to name and serve petitioning residents as parties to administrative review as required by section 3-107 of the Administrative Review Law (735 ILCS 5/3-107(a) (West 2000)).

Williams v. Tazewell County State's Attorney's Office, No. 3-03-0197 (3rd District, May 14, 2004). Because section 10 of the Firearm Owners Identification (FOID) Card Act (430 ILCS 65/10 (West 2002)) allows an applicant to apply to the circuit court to compel issuance of a FOID card when denial is based upon a domestic violence conviction, the applicant was not required to file administrative review of denial of application. Additionally, the trial court properly denied the Illinois State Police's motion to vacate the order directing it to issue the FOID card for failure to name and serve the Illinois State Police as respondent.

Martinez v. Department of Public Aid, No. 1-03-0730 (1st District, May 25, 2004). Provisions of the Illinois Public Aid Code and the Illinois Administrative Code, which authorize the Illinois Department of Public Aid (IDPA) to assert lien on bank accounts in the name of responsible relative and levy on them violates neither the open courts (Ill. Const. 1970, art. I, §12) nor the separation of powers (Ill. Const. 1970, art. II, §1) provisions of Illinois Constitution. Further, bank which turned over account in name of plaintiff and her nephew, who owed child support, pursuant to notice from IDPA, after plaintiff failed to request a hearing within 15 days, is immune from liability by virtue of provisions of section 10-24.50 of the Illinois Public Aid Code (305 ILCS 5/10-24.50 (West 2002)). Therefore, trial court properly dismissed plaintiff's complaint.

Village of South Elgin v. Waste Management of Illinois, Inc., No. 2-03-0174 (2nd District, May 28, 2004). Trial court properly dismissed plaintiff's complaint for violation of resolution of county board in which defendant was allowed to extend life of landfill because plaintiff failed to exhaust its administrative remedies. However, although count of complaint alleging breach of contract between plaintiff and defendant, whereby defendant agreed not to seek any further expansion of location in exchange for plaintiff's promise to refrain from filing objection, is defective, plaintiff should be given leave to amend its complaint, there being a basis to allege a proper claim.

Constitutional law

Wexler v. Wirtz Corp., No. 94127, 94128, 94171 cons. (April 1, 2004). Trial court erred when it denied defendant's motion to dismiss plaintiff's complaint challenging constitutionality of Public Act 91-38 because plaintiff lacked standing to challenge increase in state liquor tax. As purchaser of liquor at a retail store, plaintiff was required to establish that he paid tax involuntarily in order to have standing to challenge statute. Because he was not direct payer of tax, he may not rely on State Officers and Employees Money Disposition Act (30 ILCS 230/1 *et seq.* (West 2000)) to pay tax under protest. Further, because liquor is not necessary item, plaintiff may not claim that he paid tax under duress.

Jorgensen v. Blagojevich, No. 97624, 97656 cons. (May 20, 2004). The Governor and the General Assembly violated article VI, section 14 of the Illinois Constitution of 1970, which prohibits the diminishment of judicial salaries, when they attempted to eliminate the cost-of-living adjustment to judicial salaries for FY2003 and FY2004. The Comptroller is ordered to issue warrants drawn on the State treasury upon the receipt of vouchers prepared by the Administrative Office of Illinois Courts.

People v. Burdunice, No. 96563 (May 20, 2004). Defendant's conviction for delivery of contraband into penal institution must be reversed because amendment which added cellular telephone batteries to list of contraband, Public Act 89-688, violates single subject rule. Provision enabling Attorney General to file counterclaims in civil suits against state employees did not relate to criminal law, the subject of the remainder of the Act.

Criminal law

People v. Einoder, No. 95942, 95943, 94944 cons. (April 1, 2004). Trial court erred when it granted motion to dismiss indictments for criminal disposal of waste in violation of section 44(p)(1)(A) of the Illinois Environmental Protection Act (415 ILCS 5/44(p)(1)(A) (West 2000)) based on unconstitutional vagueness of statute. Because statute does not implicate first amendment rights and because defendants failed to present any evidence to demonstrate how contested section of statute is vague as applied to their charged conduct, the trial court could not rule on the constitutionality of the statute.

People v. Burns, No. 95987 (April 15, 2004). Appellate court erred by holding

that respondent, in preparation for hearing under Sexually Dangerous Persons Act, on recovery petition, was entitled to appointment of an independent psychiatric expert at the expense of the State. No such requirement exists in the statute, and none is required to meet constitutional muster. However, appellate court did correctly conclude that State's psychologist was qualified although he lacked a license as a clinical psychologist.

People v. Phillips, No. 3-02-0506 (3rd District, February 24, 2004). Because defendant had no legitimate expectation of privacy in computer that he submitted for repairs, his fourth amendment rights were not violated when police, after being summoned by repair technician, viewed video containing image of children engaged in sexual activity. Furthermore, indictment was sufficiently specific to apprise defendant of the charges against him when it alleged that defendant "possessed, with intent to disseminate, a photograph or other similar visual reproduction or depiction by computer, of a child whom he knew or reasonably should have known to be under the age of 18." In addition, the court specifically found, after viewing the evidence, that the photographs were not simulations and depicted children clearly under the age of 18.

In re Detention of Hughes, No. 2-00-0999 (2nd District, March 4, 2004). Because use of plethysmograph examination to measure sexual arousal and as an indication of pedophilia, has not been generally recognized by courts of this state, it was error for trial court to admit it without prior *Frye* hearing. Further, case must be remanded because commitment of defendant under Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq.* (West 2000)) was not accompanied by specific finding that respondent has substantial likelihood of committing sexually violent acts in the future.

People v. Rothman, No. 1-03-1635 (1st District, March 10, 2004). Defendant's conviction for battery, based on his conduct while leaving courtroom during civil litigation in striking opposing counsel on the back of the head, did not involve the same act underlying petition for rule to show cause why defendant should not be held in contempt in the civil litigation. Because conduct consists of separate and distinct acts, neither double jeopardy nor mandatory joinder statute prohibit prosecution.

People v. Kucharski, No. 2-02-0520 (2nd District, March 12, 2004). Pursuant to section 3.2 of the Criminal Identification Act (20 ILCS 2630/3.2 (West 2000)), medical personnel properly informed police officer that defendant required surgery because of balloons containing Ecstasy in his gastrointestinal tract. However, although error was harmless, exception to physician-patient privilege extends only to notification of police personnel of treatment of person that they believe suffered injury as result of criminal conduct and does not apply to trial testimony. In addition, because weight of controlled substance must be reduced by weight of contaminant from defendant's body in classification of offense, defendant could be found guilty of only Class 1 felony.

People v. Harper, No. 5-03-0086 (5th District, March 26, 2004). Trial court erred when it refused to entertain amended post trial motion erroneously titled "motion to reconsider" filed by defense counsel more than 30 days after conviction entered, but before sentencing hearing. Trial court has discretion to consider post trial motions at any time prior to sentencing.

People v. Barron, No. 1-03-0384 (1st District, March 30, 2004). Defendant, who while intoxicated, reported to ticket agent that he had bomb in his shoe even after being cautioned not to joke about bomb threats, was properly convicted of felony disorderly conduct despite his assertion that ticket agent understood his comments as a joke. Statute is specifically tailored to make false statements of concealed explosive devices a violation regardless of intent (720 ILCS 5/26-1(a)(3) (West 2002)). Further, defendant failed to establish that statute is unconstitutionally broad.

People v. Schmitt, No. 4-03-0445 (4th District, March 30, 2004). Police had probable cause to search truck occupied by defendants for contraband after they were informed by store security that defendants purchased two bottles of pseudophedrine, a product frequently used to manufacture methamphetamine, and police later observed him make two more purchases of two bottles in the same day. Therefore, trial court erred when it granted defendant's motion to suppress.

People v. Bramlett, No. 4-03-0782 (4th District, March 30, 2004). Contrary to holding in Second District, trial court has authority, as part of its inherent power to control its docket, to *sua*

sponte dismiss a section 2-1401 petition (735 ILCS 5/2-1401 (West 2002)) filed 2 years after final judgment entered committing respondent as sexually dangerous person as being frivolous and without merit. Further, trial court correctly held that petition lacks merit and fails to demonstrate due diligence on the part of the respondent.

People v. Smith, No. 3-03-0492 (3rd District, March 30, 2004). Defendant, who stipulated that he was over 17 years of age and that he solicited sex act from person whom he believed to be 15, may not challenge constitutionality of indecent solicitation of a child (720 ILCS 5/11-6(a) (West 2000)), as vague or overbroad because his stipulated conduct fits squarely within permissible reach of the statute.

People v. Schickel, No. 1-03-0677 (1st District, March 31, 2004). Although involuntary manslaughter is not lesser included offense of felony murder, defendant is not entitled to reversal of his conviction of involuntary manslaughter for his part in choking victim, who died during melee at reception, because defendant and his counsel invited error.

People v. King, No. 2-03-0300 (2nd District, April 13, 2004). Defendant's notice of appeal, pursuant to Supreme Court Rule 604(f), from order denying motion to dismiss on former jeopardy grounds was not timely filed because 30-day period set forth in Rule 606(b) applies to interlocutory appeals pursuant to Supreme Court Rule 604(f), and notice was not filed until 48 days after order denying motion.

People v. Winfrey, No. 2-02-1224 (2nd District, April 22, 2004). Trial court's summary dismissal of defendant's *habeas corpus* petition, with no motion to dismiss filed by State or notice to defendant, contravened provisions of section 2-612(a) of Code of Civil Procedure (735 ILCS 5/2-612(a) (West 2002)).

People v. Brown, No. 4-02-0557 (4th District, April 22, 2004). Trial court properly dismissed defendant's post-conviction petition alleging failure to properly administer Supreme Court Rule 605 admonitions when defendant pled guilty to possession of controlled substance with intent to deliver, because court, although it did not read rule verbatim, properly conveyed substance of rule's contents, and petition failed to establish that guilty plea was not voluntary. Further, new allegations

will not be considered on appeal, and defendant was afforded reasonable representation by appointed counsel.

People v. Calgaro, No. 2-03-0397 (2nd District, May 3, 2004). Trial court erred when it suppressed wiretap conversations between informant and defendant obtained pursuant to court order. Order could, and did, authorize conversations between informant and persons not named in order to be recorded, since their identity was unknown based on reasonable suspicion that pandering was occurring at defendant's business, pursuant to section 108A-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/108A-3(a) (West 2002)).

People v. Martinez, No. 3-02-0382 (3rd District, May 11, 2004). Requiring defendant to wear electronic stun belt, capable of delivering shock of 50,000 volts, as standard operating procedure in trial for murder, without first engaging in *Boose*, 66 Ill. 2d 261 (1977), analysis so fundamentally deprived defendant of fair trial that it must be reversed regardless of prejudicial effect.

People v. DuBose, No. 2-03-0500 (2nd District, May 13, 2004). Trial court erred when it barred State from presenting results of blood-alcohol test drawn from defendant after he refused to consent following motor vehicle accident from which he required medical treatment. Even though Secretary of State suspended defendant's license for refusal pursuant to section 11-501.6(c) of the Illinois Vehicle Code (625 ILCS 5/11-501.6(c) (West 2000)), State could still have blood drawn pursuant to section 11-501.6(b) of the Code (625 ILCS 5/11-501.6(b) (West 2000)) without being judicially *estopped* from admitting results.

People v. Willis, No. 1-01-3863 (1st District, June 1, 2004). Trial court erred by allowing State to call circuit judge who presided over first trial of defendant for murder without first establishing that his testimony was necessary under "special witness doctrine." There were at least two other witnesses who could have testified to events at first trial, including the Assistant State's Attorney and the court reporter.

Criminal Counsel

People v. Morris, No. 87645 (March 18, 2004). Because defense counsel introduced previous grizzly murder for which defendant was responsible in her opening statement and argued defense that was not legally available, thereby admitting to

a set of facts which entitled State to conviction, State's evidence was not subjected to adversarial process and defendant was entitled to new trial pursuant to *People v. Hattery*, 109 Ill. 2d 449 (1985).

People v. Evans, No. 90072 (March 18, 2004). Evidence was sufficient to convict defendant of murder, even though State used jail house informant. Further, defendant's motion for substitution of judge was properly denied as untimely since defendant knew identity of likely trial judge earlier, even though there was possibility that another judge might try case if presiding judge was otherwise occupied. In addition, defendant failed to establish either ineffectiveness of counsel or reversible error associated with ill advised comments during prosecutor's closing argument.

People v. Milka, No. 95740 (March 18, 2004). Evidence was sufficient to convict defendant of felony murder based on predicate offense of predatory criminal sexual assault of a child. Further, defendant was not subjected to double jeopardy by State's entry of a *null prosequi* on count of complaint alleging predatory criminal sexual assault after presentation of its case in chief and without consent of the defendant. However, as appellate court held, imposition of extended term based on age of victim constituted impermissible double enhancement.

People v. Morales, No. 93806 (April 1, 2004). Appellate court erred when it reversed defendant's conviction for murder, conspiracy to commit murder, and solicitation to commit murder for hire based on defense counsel's conflict of interest. Defense counsel, who contemporaneously represented potential State witness, who was never called to testify, but from whom letter was read into record during sentencing, was neither operating under *per se* conflict of interest nor actual conflict of interest. Defendant failed to show any way that defense counsel's performance was defective.

People v. Ortega, No. 93834 (April 1, 2004). Appellate court erred when it reversed decision of trial court to disqualify defense counsel in connection with defendant's trial for drug charges because counsel's brother and law partner represented State's witness and obtained confidential information from him. Trial court properly weighed four factors: (1) defendant's interest in being represented by attorney of his choosing; (2) State's right to a fair trial in which defense acts ethically and does not take advantage of

confidential information learned in representation of State's witness; (3) appearance of impropriety should jury learn of representation of witness; and (4) likelihood that continued representation will lead to reversal on appeal, and concluded that potential problems outweighed defendant's right to counsel of his choosing. Trial court's decision was not an abuse of discretion.

People v. Ash, No. 4-02-0838 (4th District, February 23, 2004). It was not ineffective assistance of counsel *per se* for defense attorney to waive court reporter's presence during jury selection process absent proof that failure to insist on court reporter prejudiced defendant.

People v. Lyles, No. 1-01-3478 (1st District, March 3, 2004). Because the right to counsel in prosecution of post-conviction proceedings is a matter of legislative grace, the defendant is not entitled to file motion to reinstate his appeal from dismissal of post-conviction petition as being patently without merit after 21-day period prescribed by Supreme Court Rule 367(a) for motions for rehearing of final judgments by appellate court. Even though appellate counsel confessed error, the appellate court lost jurisdiction to modify dismissal for want of prosecution order previously entered.

People v. Lang, No. 2-02-0976 (2nd District, March 9, 2004). Where complainant and chief witness for State in defendant's trial for driving while his license was revoked was an Assistant State's Attorney, who surreptitiously followed defendant as he left courthouse after D.U.I. proceedings and observed him getting into car and driving away, it was error for judge to refuse to order that special prosecutor be appointed, in order to avoid the appearance of impropriety.

People v. Cokley, No. 1-02-0701 (1st District, March 12, 2004). Record supports defendant's ineffective assistance of counsel claim by virtue of his defense attorney's failure to file motion to quash arrest, because evidence at trial demonstrates that police, who arrested defendant pursuant to stop order, lacked probable cause to arrest him. Motion to quash would have likely succeeded and altered outcome of defendant's trial for burglary. Stop order, by itself, does not establish probable cause, and statement of witness that she saw defendant in parking lot outside building near time of burglary was insufficient to establish probable cause.

People v. Boyd, No. 1-02-3741 (1st

District, March 19, 2004). Trial court correctly dismissed as frivolous and without merit defendant's post-conviction petition alleging ineffectiveness of trial and appellate counsel for failing to argue second degree murder instruction in felony murder trial, to raise excessiveness of sentence, or to argue on appeal the murder was not proven. Record did not support likely success of any of those arguments.

People v. Garner, No. 1-03-0897 (1st District, March 24, 2004). In connection with defendant's trial for aggravated criminal sexual abuse and sentence to five years imprisonment, defendant failed to establish that he was deprived of effective assistance of counsel because of failure to properly lay foundation to impeach witness with regards to declarations by victim of her age. Victim's age was not one that would have entitled her to consent to sexual intercourse. Further, incomplete Supreme Court Rule 605(a) admonition did not result in deprivation of real justice because defendant failed to point to any issue that he was deprived of presenting on appeal.

People v. Miller, No. 2-02-0855 (2nd District, March 26, 2004). Defendant established that he was entitled to post-conviction relief because he was deprived of effective assistance of counsel at trial when his attorney failed to bring out during motion to suppress hearing that police seized controlled substance from sealed duffel bag in locked cabinet that was under his exclusive control. Therefore, occupier of premises on which bag was located lacked ability to consent to search, and defendant established both prongs of *Strickland* test. However, trial court properly denied count of post-conviction petition regarding seizure of cannabis pursuant to search warrant.

People v. Haynie, No. 1-01-4427 (1st District, March 26, 2004). Minor defendant charged with murder was not deprived of effective assistance of counsel because of failure to file motion to suppress videotaped statement made by defendant because it would have been futile. Youth officer located his mother, made sure he was read his *Miranda* rights, and deferred questioning of defendant until his mother was present, thereby insuring that statement was voluntary. Further, although this defendant was not subject to death penalty because of his age, he was charged with offense punishable by death. Therefore, compulsion was not available to him as a defense.

People v. Hernandez, No. 1-03-0943 (1st District, March 29, 2004). Defendant's post-conviction petition, alleging ineffective assistance of counsel for following a trial strategy whereby the defendant had no choice but to testify in his own behalf, was subject to summary dismissal because it failed to satisfy the prejudice prong of *Strickland*. Based on the testimony of witnesses and the confession of defendant in custody, the defendant's guilt was overwhelmingly proved.

People v. Durgan, No. 4-02-0907 (4th District, March 30, 2004). By stipulating to results of forensic testing of substances seized from defendant as cocaine, defendant stipulated to all foundation issues with regards to said evidence and cannot challenge it on appeal even though argument is couched in terms of sufficiency of the evidence. Further, it was not plain error for trial court to substitute alternate juror for a juror who became ill during deliberations. In addition, record was insufficient to reverse conviction of possession of cocaine with intent to deliver based on ineffective assistance of counsel for failure to file motion to suppress.

People v. Young, No. 1-99-0450 (1st District, March 31, 2004). Defendant's trial for murder was so tainted by prosecutorial misconduct, consisting of demanding that the defendant comment on the veracity of other witnesses, suggesting that the jury could resolve case by deciding which witnesses to believe, and giving its own opinion of credibility of witnesses, that combined with ineffective assistance of defense counsel, defendant was denied a fair trial. Defense counsel failed to object to prosecutor's offensive tactics and failed to properly counter testimony of State's forensic experts.

People v. Lemke, No. 5-02-0531 (5th District, April 20, 2004). Because defendant's admitted conduct of pointing a weapon at victim when it discharged, allegedly accidentally, would not have resulted in acquittal of defendant, it was ineffective assistance of counsel for defense counsel to fail to present involuntary manslaughter defense in defendant's bench trial for murder.

People v. Wilson, No. 4-03-0113 (4th District, May 4, 2004). Trial court properly dismissed defendant's second post-conviction petition, and defendant was not deprived of conflict free counsel merely because court appointed counsel was appointed State's Attorney while

motion to dismiss was under advisement by trial court. Further, argument that felony murder conviction was void because statute of limitations for underlying felony of armed robbery had expired at time charges for murder were filed was without merit.

People v. Patterson, No. 4-03-0535 (4th District, May 4, 2004). In defendant's trial for murder and concealment of a homicide, although use of grand jury testimony of witness who invoked privilege and refused to testify at trial violated defendant's right of confrontation, it was harmless error. Further, defendant was not deprived of effective assistance of counsel by defense attorney informing jury during opening statement that witness would testify, failing to file motion to suppress, or claimed inadequate cross examination of DNA expert. In addition, sentence of 50 years for murder of drug dealer was not excessive, and consecutive sentence for concealment of a homicide was mandatory.

People v. Rivera, No. 1-00-3871 (1st District, May 7, 2004). Trial court had standing to *sua sponte* raise issue of purposeful discrimination by defense counsel in its use of peremptory challenges to exclude African American jurors. Court's decision to seat juror over objection of defense was not manifestly erroneous. Further, although extended term sentence for murder of victim mistakenly thought by defendant to be member of rival gang violated *Apprendi*, it was harmless error.

Village of Lake Villa v. Bransley, No. 2-02-1152 (2nd District, May 11, 2004). Defendant was properly convicted of violating municipal ordinance prohibiting driving on public highway while driver's license was suspended because road upon which defendant was driving was "public highway" even though dedicated road was being temporarily maintained by subdivision developer under agreement with village, which made acceptance of roads conditional on completion of all requirements of development. Further, defendant failed to provide sufficient record to establish that village wrongfully refused to appoint counsel for him because he was indigent.

People v. Davis, No. 1-03-0822 (1st District, May 21, 2004). Defendant was deprived of effective assistance counsel when counsel failed to file motion to suppress evidence and quash arrest but entered into a stipulated bench trial in order to challenge constitutionality of

aggravated unlawful use of a weapon statute. There is reasonable likelihood that motion to suppress would have succeeded because from stipulated trial it appears that officer lacked probable cause to open door to defendant's parked vehicle in which defendant was sleeping.

People v. Campos, No. 2-03-0032 (2nd District, June 1, 2004). Although it applied incorrect standard, trial court's finding that Assistant State's Attorney did not intend to provoke a mistrial when he repeatedly asked police chief about defendant's response to his questioning, knowing that the defendant asked to speak to an attorney, allows retrial of defendant without violating double jeopardy clause.

Juveniles

People v. Perea, No. 1-02-0662, 1-02-0871 Cons. (1st District, March 2, 2004). Evidence that defendants participated in common plan to attack victim, smash his head and body with concrete block, and steal his sweater and shoes, was sufficient to convict defendants of armed robbery on accountability theory, a Class X felony. Further, Presumptive Transfer Statute (705 ILCS 405/5-805(2)(a) (West Supp. 1999)), whereby defendants were transferred for trial from juvenile court to adult criminal court based on probable cause of attempted first degree murder, is neither unconstitutionally vague, nor violative of due process or equal protection. In addition, although predicate offense for which defendants were transferred, did not result in conviction, they were convicted of a different predicate offense, armed robbery, and therefore properly sentenced as adults to 7 years.

In re J. T., No. 1-02-3868 (1st District, March 24, 2004). When respondent admitted to criminal damage to property in exchange for sentence of probation in juvenile court proceeding, the trial court erred by giving him incomplete Supreme Court Rule 604(c) admonition. Therefore, even though respondent failed to file motion to withdraw plea and was subsequently sentenced to Department of Corrections juvenile division upon revocation of probation, case must be remanded for respondent to be given proper admonition.

In re Christopher K., No. 1-02-0230 (1st District, May 7, 2004). Trial court erred when it allowed State, after filing and losing petition to transfer respondent to adult court for murder, to petition to designate the matter as an extended

jurisdiction juvenile (EJ) proceeding. Transfer motion and EJJ petition must be considered simultaneously. Therefore, adult portion of respondent's sentence will be vacated. However, because there was probable cause to arrest respondent and statements were voluntary, motions to suppress and quash were properly denied, and adjudication of delinquent by virtue of murder was supported by the evidence.

Sentencing

People v. Townsell, No. 95725 (April 15, 2004). It was not plain error for trial court to impose extended term sentence on defendant for murder as result of guilty plea whereby State agreed not to seek death penalty or life imprisonment. By pleading guilty, defendant waived any right to have jury consider facts requisite for extended term sentence pursuant to *Apprendi*. Further, appellate court's use of Supreme Court Rule 615(a) to circumvent waiver rule was inappropriate.

People v. Huddleston, No. 96367 (June 4, 2004). Because mandatory life sentence for predatory sexual assault when defendant has been convicted of predatory sexual assault against two or more victims ((720 ILCS 5/12-14.1(a)(1) (West 2002)) violates neither proportionate penalties or due process clauses of constitution, trial court's imposition of consecutive 10-year sentence of imprisonment was error.

People v. Pizano, No. 1-01-4277 (1st District, March 4, 2004). Defendant, who was arrested with false immigrant identification on his person, was properly convicted, but his sentence violated proportionate penalties clause of Illinois Constitution of 1970, because offense of knowing possession of a false identification is punished more severely than possession of false identification with intent to use it to commit theft. However, because statute bears rational relationship to legislative intent with mere "knowing" mental state, it is not unconstitutionally overbroad.

People v. Kelly, No. 1-02-2071 (1st District, March 4, 2004). Because the offenses of unlawful possession of a weapon by a felon and aggravated unlawful possession by a person who has previously committed a forcible felony serve different legislative purposes, they cannot be compared to one another for proportionate penalties analyses. Therefore, defendant has failed to establish that classification of unlawful use of a weapon by a felon as a Class 2 felony

violates proportionate penalties clause.

People v. Gougisha, No. 1-02-1701 (1st District, March 11, 2004). Defendant, who pled guilty to aggravated battery of a child and was sentenced to 12 years, entered into a negotiated plea, but was not properly admonished pursuant to Supreme Court Rule 605(c) because trial court failed to apprise defendant of her right to appeal, although it did inform her that she must file motion to withdraw guilty plea within 30 days.

People v. Blanks, No. 1-02-0161 (1st District, March 15, 2004). Because amendment to residential burglary statute making burglary a lesser included offense of residential burglary may constitutionally be applied retroactively, defendant was properly convicted of burglary of building under construction intended by victim to be used as dwelling upon completion. In addition, 30-inch-long and two-inch-wide stick that defendant was swinging wildly, striking victim, qualifies as deadly weapon, qualifying defendant's conduct for aggravated battery conviction. Further, defendant's extended sentence of 6 years, without special jury findings, does not violate *Apprendi* because it is based on defendant's criminal record.

People v. Walls, No. 5-01-0771 (5th District, March 19, 2004). Defendant, in trial for aggravated criminal sexual assault, was not entitled to impeach victim with previous allegedly false accusation of domestic violence against her husband, it being collateral to case at hand. Further, natural life term mandated for aggravated criminal sexual assault with prior conviction of aggravated criminal sexual assault, does not violate proportionate penalties clause. In addition, by objecting to unauthorized prosecutor based only on financial disparity, defendant waived issue of propriety of appointment of special prosecutor.

People v. Watson, No. 1-03-1131 (1st District, March 18, 2004). Commutation of defendant's death sentence to life imprisonment by former Governor, at request of defendant, renders his assertion on appeal that he was not eligible for sentence imposed because murder was not committed in cold and calculating manner moot.

People v. Palmer, No. 2-02-0592 (2nd District, March 26, 2004). Defendant who was sentenced to seven life sentences for conviction of home invasion, aggravated sexual assault and attempt murder with prior criminal record, could only be sentenced under habitual crimi-

nal statute to one life sentence, because all counts of complaint for which he was convicted resulted from same transaction. Further, several counts of conviction must be vacated as violative of one-act, one-crime rule. In addition, since counts of complaint failed to make it clear that he was being charged with separate acts of sexual assault, as opposed to alternate theory of same act, he could properly only be convicted of one count of aggravated sexual assault.

Election law

Libbra v. Madison County Regional Board of School Trustees, No. 5-04-0087 (5th District, March 11, 2004). Because section 7-7 of the School Code (105 ILCS 5/2-2 (West 2002)), providing for stay of proceedings during administrative review of annexation petition, does not apply to a petition requesting that a referendum concerning annexation be placed on the ballot and because petitioner did not file objection to referendum portion of petition, trial court had no jurisdiction to lift statutory stay of section 7-7. Referendum may go forward pursuant to Election Code irrespective of administrative review.

Bergman v. Vachata, No. 1-04-0138 (1st District, March 12, 2004). Back door referendum petitions for school revenue bonds were in substantial compliance with the Election Code when circulator's signature on each page was contained within the notary's jurat. In addition, language of circulator's affidavit, which failed to contain the word "knowledge" was in substantial compliance with the Election Code. Further, holding by trial court that objector failed to prove fraud in the circulation of petitions is not against the manifest weight of the evidence.

Kellogg v. Cook County Illinois Officers Electoral Board, No. 1-04-0449 (1st District, March 31, 2004). Candidate for circuit judge failed to qualify for placement on the ballot for the Democratic primary because he failed to file a statement of economic interest with the Secretary of State. Therefore, he was unable to file with the State Board of Elections the receipt indicating that he had filed a statement of economic interest as required by the Election Code.

Freedom of Information Act

Chicago Alliance for Neighborhood Safety v. City of Chicago, No. 1-01-1588 (1st District, March 26, 2004). Trial court correctly held that plaintiff was not enti-

tled to the names and addresses of person who attended beat meetings from city police department, because they were exempt pursuant to section 7(1)(b) of the Freedom of Information Act (5 ILCS 140/7(1)(b) (West 2000)). Although police department had previously supplied outside research institution with this information, department did not waive exemption, because it gave information under strict condition of confidentiality, which had been followed. Further, the identity and address of persons who filed FOIA requests which were denied was protected by section 7(1) as invasion of privacy. In addition, the plaintiff is judicially estopped from claiming that revised list of information available is insufficient. However, trial court's award of attorney fees to plaintiff was not an abuse of discretion, because it found that police department had no reasonable basis to withhold much of the requested information.

Trent v. Office of the Coroner, No. 3-03-0206 (3rd District, June 3, 2004). Consent from mother of deceased child, who was convicted of first degree murder of that child, is insufficient to overcome exemption from disclosure of medical records of child in possession of coroner pursuant to section 7(1)(b) of the Freedom of Information Act (5 ILCS 140/7(1)(b) (West 2002)). Further, disclosure was not mandated by section 8-802 of the Code of Civil Procedure (735 ILCS 5/8-802 (West 2002)).

Mental health law

In re Denise C., No. 1-02-1535 (1st District, May 28, 2004). Involuntary commitment petition was not defective for failure to comply with section 3-601(b)(2) of Mental Health and Developmental Disabilities Code (405 ILCS 5/3-601(b)(2) (West 2002)) by failing to include names of relatives, guardians or friends. Petition alleges sufficient information to conclude that Department made diligent effort to find family and friends as contemplated by section 3-601(b)(2).

Municipal law

Village of Sugar Grove v. Rich, No. 2-03-0218, 2-03-0219, 2-03-0220, 2-03-0221, 2-03-0222, 2-03-0223, 2-03-0224, 2-03-0225, 2-03-0272 cons. (2nd District, March 4, 2004). Non-home-rule municipality had the statutory power, pursuant to its authority to regulate nuisance, to prohibit noise pollution. The village's ordinance was not preempted by the Environmental Protection Act (415 ILCS

5/1 *et seq.* (West 2002)). However, defendant's multiple convictions, for different times during hour and a half period in which he played loud music, violated one-act, one-crime doctrine, and he can be sentenced to only one offense per date.

Village of Orland Hills v. Citizens Utilities Co., No. 1-02-1450 (1st District, March 15, 2004). A provision in a public water contract between water utility and municipality, which was approved by the ICC, that prohibits the utility from providing water service to a parcel of land subsequently annexed by neighboring village, is valid and enforceable and does not constitute impermissible attempt to exercise extra-territorial control. Further, neighboring village could not enforce implied contract based on expired agreement between it and utility for utility to supply water to lands subsequently attached to village, because issue had been pre-empted by the Public Utilities Act (220 ILCS 5/1-101 *et seq.* (West 2002)).

Village of Stickney v. Board of Trustees of the Police Pension Fund, No. 1-03-1111 (1st District, March 30, 2004). Although a police pension board has discretion to allow a municipality to participate in a police disability hearing, the village failed to make an offer of proof before the board. Therefore, the village failed to demonstrate any prejudice inflicted by failure to allow village attorney to cross-examine witness. Circuit court erred in remanding case for new hearing. Circuit court must conduct review based on record before it.

Village of Bolingbrook v. Bolingbrook Firefighters Ass'n, No. 3-03-0065 (3rd District, March 30, 2004). It was not an abuse of discretion for labor relations board to deny municipal employer a filing variance to respond to an unfair labor practice charge 11 days after filing deadline, particularly since the employer failed to file motion for extension of time, provide a compelling reason for its delay, or file motion for leave to file late response. Further, finding that station chief was transferred in retaliation for protected activity was not clearly erroneous and remedy of ordering that he be allowed to serve as station chief at former station and be paid any lost wages does not exceed authority of board.

Coyne v. Milan Police Pension Board, No. 3-03-0066 (3rd District, April 13, 2004). Rather than reverse decision of police board that contains lack of specific findings as being against manifest

weight of the evidence outright, when board relied on minority opinion of only one examining physician that petitioner was not disabled, trial court should have remanded decision for more specific findings. Further, board's interpretation of section 3-115 of the Pension Code (40 ILCS 5/3-115 (West 1996)) that board's examining physicians must be unanimous in finding that petitioner is disabled is illogical and incorrect. However, board's determination that petitioner was not entitled to a line-of-duty disability pension because post traumatic stress syndrome from which he suffers did not result from one isolated event, but from series of stressful occasions, was not against manifest weight of the evidence. In addition, village clerk, who had no control over financial decisions, was not subject to removal for bias.

Hart v. Town of Shafter, No. 5-03-0237 (5th District, May 13, 2004). Trial court's ruling that township had not abandoned public road despite decades of nonuse, loss of bridge, and growth of brush rendering it impassable, was correct. Plaintiffs failed to establish adoption of acceptable alternate route by public, because closest alternative more than doubled distance between locations traversed by subject road. Therefore, owners of adjacent land were not entitled to injunction prohibiting township and its road commissioner from entering onto their property to replace bridge.

City of Champaign v. Sides, No. 4-02-0574 (4th District, May 19, 2004). Home rule municipality was not prohibited from enacting ordinance prohibiting public indecency by existence of indecent exposure statute (720 ILCS 5/11-9 (West 2000)) containing inconsistent language. Further, city was properly held to preponderance of the evidence burden of proof, was properly allowed to amend pleadings, and was not improperly aided by trial court.

Rhoads v. Board of Trustees of the City of Calumet City Policemen's Pension Fund, No. 1-03-2012 (1st District, May 20, 2004). When two attorneys participate for board in police disability hearing, one presenting evidence, and another advising the board, the one presenting evidence does not make beneficiaries of the fund a separate party to the proceedings entitled to be named as a party. Therefore, trial court properly denied motion to dismiss claiming failure to name beneficiaries of fund as party defendant under section 3-107(a) of the Administrative Review Law (735 ILCS 5/3-107(a) (West 2000)). However, trial

court erred when it held that decision to terminate claimant's disability pension was against manifest weight of the evidence. Evidence supported finding that former police chief had recovered sufficiently to perform former position as police chief and was not entitled to continuation of his pension solely because position was no longer available to him.

Taxation

Franklin County Board of Review v. Department of Revenue, No. 5-02-0541 (5th District, March 9, 2004). Decision by Department of Revenue that conservancy district was entitled to exemption from property taxes pursuant to section 15-75 of Property Tax Code (35 ILCS 200/15-75 (West 1998)), is not clearly erroneous because restaurant, hotel and condominiums operated on subject premises were open and available to the general public and used for an exempt purpose during the 1999 tax year.

In re Application of the County Treasurer, No. 1-02-1667 (1st District, March 29, 2004). Trial court erred when it denied occupant's petition under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2000)) to set aside a tax deed issued without proper notice. As signer of mortgage, for purposes of waiver of his homestead exemption, movant qualified as owner of "other recorded interest" in real estate for purposes of section 22-45 of the Property Tax Code (35 ILCS 200/25-45 (West 2000)). Further, court's finding of lack of due diligence was an abuse of discretion because it relied on overly strict interpretation of statute and failed to consider equitable concerns arising from movant's circumstances, including his difficulty conducting financial transactions in English. However, finding of lack of due diligence on part of person served with notice and mortgage was not an abuse of discretion.

Board of Education of Batavia, Unit School District No. 101 v. Cunningham, No. 2-03-0846 (2nd District, March 29, 2004). Clerk correctly extended levy for additional taxes based on successful referendum to increase educational fund rate by an increase of .16, the difference between the maximum levy before referendum and the maximum rate approved by the referendum, rather than .55, the difference between the previous year's levy and the new maximum rate approved, as the school board contended. Section 17-3.4 of the School Code (105 ILCS 5/17—3.4 (West 2002)) does not require that "rate increase approved"

be measured from current levied rate.

Calvary Baptist Church v. Department of Revenue, No. 4-03-0205 (4th District, March 30, 2004). Decision of Department of Revenue that subject property was not entitled to religious-use exception to property tax because it was not used primarily for religious purposes was clearly erroneous. Department used overly restrictive definition of "religious purpose" and should have accepted owner's assertion that fellowship and evangelism were tenets of faith being practiced during use as youth and retreat camp.

Ogden Chrysler Plymouth, Inc. v. Bower, No. 2-03-0194 (2nd District, May 7, 2004). Decision by the Director of the Illinois Department of Revenue that payments by manufacturer of automobiles to dealer in connection with employee purchase program must be included in dealer's "gross receipts" for purposes of Retailers' Occupation Tax Act was mixed question of law and fact, which trial court incorrectly concluded was clearly erroneous. Because each payment was tied to individual purchase, they must be included. Further, series of private letter rulings did not make subsequent enactment of rule improper, and trial court's decision to deny dealer's prayer for attorney fees was proper.

Swilley v. County of Cook, No. 1-02-2748 (1st District, May 10, 2004). Plaintiffs' complaint challenging county's practice of acquiring delinquent property at scavenger sale for non-cash bid and transferring it to City of Chicago for no compensation failed to state viable cause of action because alleged improper practice was allowed by section 21-90 of the Property Tax Code (35 ILCS 200/21-90 (West 2000)).

Tort immunity and liability

Raintree Homes, Inc. v. Village of Long Grove, No. 95181 (March 18, 2004). Trial court erred when it dismissed counts of plaintiff's complaint seeking declaration that impact fees in building permits were illegal and seeking refund for violation of one-year limitation period contained in section 8-101 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/8-101 (West 2000)). Because action was one for restitution based on unjust enrichment, Local Governmental and Governmental Employees Tort Immunity Act did not apply. However, trial court did correctly dismiss one count of complaint for lack

of standing because defendant presented un rebutted affidavit that permit was paid for by someone other than plaintiff.

Jenkins v. Lee, No. 95876 (March 18, 2004). Physician at State-owned and operated mental health facility was not immune from liability for negligence in failing to properly diagnose decedent's mental illness and releasing him, resulting in his suicide, because source of defendant's duty was role as physician rather than employment by State.

Fritz v. Johnston, No. 96325 (March 18, 2004). Trial and appellate courts erred when they dismissed complaint alleging civil conspiracy against State officials in connection with filing false report with Illinois State Police and instigating investigation of plaintiff based on sovereign immunity grounds. Criminal conduct of making false police report and conspiracy with regards thereto was not protected by sovereign immunity. However, counts of complaint against two of the defendants failed to contain sufficient allegations to properly allege conspiracy and should be dismissed on that ground.

Albers v. Breen, No. 4-03-0640 (4th District, March 2, 2004). School social worker, who disclosed the identity of boys who were bullying plaintiff's son to school principal, allegedly despite assurances to plaintiff that she would not, is exempt from liability for violation of section 11 of the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/11 (West 2002)), which immunizes disclosure for purpose of preventing further abuse. Further, school principal is exempt by virtue of section 2-201 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/2-201 (West 2002)) for disclosing allegation to offenders in the process of imposing discipline, because disclosure was discretionary policy decision. Therefore, trial court properly granted motion to dismiss.

Fender v. Town of Cicero, No. 1-02-0950, 1-02-3545 Cons. (1st District, March 16, 2004). Trial court correctly held that section 2-201 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/2-201 (West 2000)) granted blanket immunity to police officers who were engaged in partially discretionary and partially policy decisions associated with service at fire of apartment building in which they allegedly failed to enter building to rescue known victims inside.

Gallagher Basset Services v. Miggins, No. 2-03-0357 (2nd District, March 26, 2004). Trial court erred when it barred defendant from raising comparative negligence of employee of municipality as defense to subrogation claim for property damage brought by municipality's employer. Section 5-106 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/5-106 (West 2000)) does not immunize municipality from defense of comparative negligence.

Johnson v. City of Chicago, No. 1-02-2689 (1st District, March 31, 2004). Trial court erred when it dismissed negligence complaint against city for failure to properly maintain gate of fence surrounding parking lot adjacent to public library building, which fell on plaintiff's leg causing injury. Section 3-106 of Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/3-106 (West 2000)) does not immunize city from liability for condition of gate when plaintiff was not in parking lot, but was walking on public sidewalk adjacent thereto, because recreational use was so incidental that section 3-106 did not apply.

Murray v. Chicago Youth Center, No. 1-02-3615 (1st District, April 16, 2004). Although section 3-108(a) of the Local Governmental and Governmental

Employees Tort Immunity Act (745 ILCS 10/2-201; 3-108(a)(West 1992)) does not provide absolute immunity to youth group sponsoring school tumbling programming for failure to supervise use of facilities, allegations of complaint failed to contain facts sufficient to allege willful and wanton negligence by claiming merely that youth group supervisor failed to insist on use of harness and safety equipment in connection with use of mini trampoline. Further, warnings on mini-trampoline were sufficiently prominent, and plaintiff cannot claim that warnings were insufficient because 13-year-old plaintiff, who suffered spinal cord injury in jumping off trampoline, admitted that he never read them. Therefore, both youth group and distributor were entitled to summary judgment.

Toth v. England, No. 5-02-0402 (5th District, April 27, 2004). Defendant, caseworker in the employ of association under contract with the Illinois Department on Aging to perform services designated in Elder Abuse and Neglect Act (320 ILCS 20/1 et seq. (West 2000)), was an "employee" within definition of that term in the State Employee Indemnification Act (5 ILCS 350/1(b) (West 2000)) and was immune from defamation claim arising out of allegations of motion to freeze assets. Therefore, although trial court was correct when it dismissed association, it

erred when it granted judgment against caseworker. It lacked jurisdiction.

Zoning

Oak Grove Jubilee Center, Inc. v. City of Genoa, No. 2-01-0938 (2nd District, April 20, 2004). Because applying rule of *Klaeren v. Village of Lisle*, 202 Ill. 2d 164 (2002), retroactively would unreasonably prejudice the plaintiff, by rendering its pleadings challenging denial of special use permit subject to dismissal, and complaint containing allegations sufficient to satisfy *Klaeren* time barred, *Klaeren* was given only prospective application in the case at hand. Further, because village ordinance would essentially prohibit plaintiff from establishing church anywhere within village, its complaint was not moot by virtue of plaintiff's lease having been terminated since its complaint was filed. In addition, trial court erred when it *sua sponte* concluded that plaintiff's complaint contained insufficient allegations to confer standing and that plaintiff's, a not for profit corporation's, application was void because it was filed by minister, a non-lawyer. Plaintiff's minister was authorized to file application under legislative function of village board under former case law, and plaintiff has been represented by attorney throughout litigation.

ISBA LAW ED SERIES • 2004 Academic Year

Public Information and Privacy Rights

A Seminar for Government Attorneys on the Open Meetings Act and Freedom of Information Act

Date: Monday, October 4, 2004

Time: 2 pm – 5 p.m.

Location: ISBA Regional Office, 20 S. Clark Street, Suite 900, Chicago

Cost: All attendees- \$25

Registration: Use Registration Form for mail or fax registration. Make checks or money orders out to ISBA. Visa and MasterCard accepted. Fax and phone registrations must be accompanied by credit card information.

Deadline: All registrations must be received three working days in advance.

visit www.isba.org for more information.

REGISTRATION FORM

Name _____ Day Phone (____) _____
 Street _____ City _____ State _____ Zip _____
 E-mail _____
For Credit Cards: _____ Visa _____ MasterCard Card # _____
 Exp. Date _____ Signature _____

psst... Wanna get ahead of the game?

This newsletter is available on the ISBA's Web site nearly two weeks before it comes to you in the mail—meaning you could be informed about important issues and updates affecting your practice long before the competition.

Sound good? Hundreds of other attorneys who think so have already signed up. So before any more time goes by, send an e-mail to jlyman@isba.org and tell her you want this newsletter electronically—and all the benefits that go along with being in the know.



Standing Committee on Government Lawyers

Illinois Bar Center
Springfield, Illinois 62701-1779

September 2004

Vol. 6, No. 1

Non-Profit Org.
U.S. POSTAGE
PAID
Springfield, Ill.
Permit No. 820

