



STANDING COMMITTEE ON GOVERNMENT LAWYERS

The newsletter of the Illinois State Bar Association's Standing Committee on Government Lawyers

From the Chair

By Lisle Stalter

On July 1, 2009, the Illinois Supreme Court entered an order that repeals the Illinois Rules of Professional Conduct effective January 1, 2010, and replaces them with the Illinois Rules of Professional Conduct 2010. Have you had a chance to read all 136 pages of the New Rules of Professional Conduct that go into effect on January 1? I have to admit that I have printed them and skimmed through them, which means I glanced over them to see what might be applicable to government attorneys. Even so, could I actually tell another government attorney what he or she needs to know? Honestly, no. Presumptively most of you are in the same position. To make it easier for you, the ISBA's Committee on Government Lawyers (CGL) has organized a special two hour program to take place on the morning of December 10th in Chicago (that same day the ISBA's midyear meeting starts). In addition, we were able to obtain a special rate of \$30 for ISBA members and \$50 for nonmembers. This

program will discuss the revisions to the Rules of Professional Conduct specifically as relevant to government attorneys (we will not be discussing client trust accounts or retainer fees). I hope you put this on your calendar now and do all you can to take advantage of this seminar. In addition, tell your colleagues.

As you can tell, the CGL has already started this next year running. Our goal is to keep up the pace. We are also looking into another ethics extravaganza. Similar to the programs we have done in Chicago and Springfield. If we have enough interest, we would like to present the program downstate (Carbondale area). To that end, you can be of assistance. We need to get an idea of how many attorneys would be interested in an ethics program downstate. Please e-mail and let me know your thoughts; my e-mail address is: <lstalter@lakecountyil.gov>. If you have

Continued on page 2

Party challenges denial of FOIA request because party refused to pay \$5,500 fee

By Mary Ann Connelly

Sage Information Services and Roger W. Hurlbert v. Gary A. King, Du Page County Clerk, Illinois Appellate Court, Second Dist., Docket No.2-07-1262 (May 29, 2009)

Plaintiff Sage Information Services and Roger W. Hurlbert (hereinafter Sage) sought information pertaining to the property assessments of all parcels located in DuPage County. The DuPage County Clerk (hereinafter Clerk)

responded that the information requested was only available in "raw data form" and Sage would have to provide three IBM 3490 cartridges and a payment of \$5,500. Sage contacted the Clerk and requested that the fee charged to reproduce the electronic documentation should be reduced to an amount that would cover the costs of the actual costs of copying the electronic records.

Continued on page 2

INSIDE

- From the Chair** 1
- Party challenges denial of FOIA request because party refused to pay \$5,500 fee.** 1
- Public sector discipline: May 2009 Term of Court** 3
- 2009 legislative summary** 3
- Attorney General issues opinions** 8
- Research resources from Illinois Academic Law Libraries** 9
- Upcoming CLE programs** 10

(Notice to librarians: The following issues were published in Volume 10 of this newsletter during the fiscal year ending June 30, 2009: September, No. 1; December, No. 2; April, No. 3; June, No. 4).

Save the Date

The New Rules of Professional Conduct for Government Attorneys

December 10, 2009

**ARDC Offices in Chicago
10:00 a.m. – 12:00 p.m.**

From the Chair

Continued from page 1

not been to an ethics program put on by the CGL, I would recommend doing so. Admittedly, I have only been involved in a couple of them, but the goal of the program is to make ethics interesting (and sometimes funny) and something you can keep with you in your day-to-day practice.

Another goal of the Committee this year is to identify as many ISBA government attorneys as possible. The ISBA does not track government lawyers. So, as you talk with your friends and colleagues please encourage them, if they have not already done so, to identify themselves as a government attorney to the ISBA. One benefit is that they

can receive this newsletter at no cost. In addition, having an accurate count on the number of ISBA members who are government attorneys will hopefully help the Committee advocate on your behalf. One of our greatest accomplishments, other than the newsletter, is that over the last couple of years we have been able to obtain a reduced rate for our CLE programs. But, to achieve this goal we will need your assistance. If you know of any ISBA members who are government attorneys but who do not receive this newsletter please encourage them to contact the ISBA. Or, they can contact either me (my e-mail address is above) or Ron Rascia (rrascia@atg.

state.il.us), who is heading the CGL's effort to identify government lawyers. We will forward the information to the ISBA.

Hopefully, this is just the start of a productive year. I plan to continue the work started by the Committee's previous chairs in serving government attorney ISBA members. If there is something you would like to see the Committee do or undertake, please let me know, I would love to hear from you.

Finally, as Illinois and the ISBA celebrate Abraham Lincoln's 200th birthday, I will leave you with one of my favorite Lincoln quotes: "whatever you are, be a good one." ■

Party challenges denial of FOIA request because party refused to pay \$5,500 fee

Continued from page 1

The Clerk refused to lower the fee and sent a second letter to Sage denying their request and stated that the information requested was exempt under section 1 of FOIA, based on "Private Gain" and "GIS Information" (geographical informational systems).

Sage filed a one-count complaint against the Clerk, seeking a court order directing the Clerk to release the information it had requested pursuant to the FOIA, "at a cost not to exceed the actual cost of reproduction, as contemplated by law." The Clerk filed a section 2-619 motion to dismiss and also argued that the under Resolution FI—002-02 the fee was reasonable. The trial court granted the clerk's motion to dismiss and in its memorandum opinion found that Resolution FI—0002—02, in conjunction with the Property Tax Code, was more specific than the FOIA regarding fees and determined that the fee of \$5,500 was reasonable.

Sage filed an appeal of the trial court decision contending that the trial court erroneously granted the section 2-169(a)(9) motion to dismiss and requested an order to grant the FOIA request at a cost established by section 5—1106.1(c) of the Counties Code.

The Illinois Appellate reversed the trial court's decision and remanded the case back

to the trial court.

The court determines that their review of the trial court's order granting a motion to dismiss under section 2-619 is denovo pursuant to *Van Meter v. Darien Park District*, 207 Ill. 2d 359(2003).

The court provides an interesting analysis of FOIA requests and what body of authority should control. The court ultimately agrees with Sage's argument that the plain language of section 6(a) the "charge for the reproduction of public records must be reasonably calculated based on the actual cost of reproduction." The Clerk contends that the "actual provisions in FOIA does not apply" because the cost provisions of the Property Tax Code and Resolution FI—0002-02 "control" the cost of reproducing the specific type of information requested by Sage and those provisions as opposed to FOIA should dictate the fees that the Clerk may impose. The court disagrees and finds that the cost provision under section 9—20, in conjunction with Resolution FI—0002-02, applies to the actual-cost provision of section 6(a) of the FOIA and should be applied to this case.

The court also addresses the issue raised by Sage pertaining to public policy. Sage argued that the trial court's decision was in

direct conflict to the public policy considerations of openness and access to public records under the FOIA. The court notes that "considerations of public policy are superfluous when statutory language is clear" citing *Village of Roselle v. Roselle Police Pension Board*, 382 Ill. App. 3d 1077, 1083 (2008).

The final issue addressed by the court was whether the trial court erred by deciding a material and genuine question of fact as it pertained to the reasonableness of the \$5,500 reproduction fee. The court concludes that the question of the reasonableness of the \$5,500 is a substantial factual dispute. The court notes the arguments made by both parties but concludes that the Clerk offers no factual basis for his decision that the charge of \$5,500 is reasonable. The court determines that the response by the Clerk is "conclusory," without a factual basis and "does not establish a reasonableness of the fee."

Court finds the trial court erred when it decided a controverted material issue of fact and the trial court should have denied the Clerk's motion to dismiss. ■

This article was originally published in the June 2009 issue of the ISBA's Tax Trends newsletter, Vol. 52, No. 12.

Public sector discipline: May 2009 Term of Court

By Leonardo Morales*

In re Mills, Commission No. 07 SH 2, S. Ct. No. M.R. 23070 (May 18, 2009). Daniel Cass Mills was employed as an Assistant State's Attorney in Sangamon County, Illinois, between 2005 and 2006. Throughout 2005, Mills purchased and used cocaine and cannabis, and he occasionally used cocaine with another Assistant State's Attorney.

The disciplinary case against Mills was originally brought on the basis of his possession and use of the illegal drugs. For purposes of concluding this matter by way of a petition for discipline on consent, additional misconduct was incorporated, namely, Mills' involvement in an altercation in and in front of the Caddy Shack bar in Springfield, Illinois. He had pulled a 9mm handgun from his waistband and pointed it at another bar patron. After he was arrested trying to flee from the bar, the police found a pipe used for smoking cannabis in his pocket. On December 5, 2008, a judgment of conviction was entered against Mills in the Circuit Court of Sangamon County for unlawful use of a weapon, unlawful possession of a firearm,

and possession of drug paraphernalia. The court ordered a 90-day jail sentence, a two-year period of probation with conditions, and a \$1,000 fine.

The Supreme Court of Illinois allowed the Administrator's petition to impose discipline on consent and suspended Mills for two years and until further order of the Court. Mills was not considered eligible for probation because he had provided insufficient evidence of treatment for substance abuse, as is required under Supreme Court Rule 772, governing probation.

The *Mills* petition to impose discipline on consent and the Supreme Court's final order of discipline can be found in their entirety in the Attorney Registration and Disciplinary Commission's Web site at <www.iardc.org>, by selecting "Rules and Decisions" and inserting the attorney's name or the case number in the appropriate search field. ■

*Leonardo Morales is a Law Clerk for the Attorney Registration and Disciplinary Commission. He is a third-year student at The John Marshall Law School.

2009 legislative summary

By James W. Chipman*

The following is a summary of some of the more controversial bills affecting government lawyers that were considered by the General Assembly in the 2009 spring session. The summary is intended to inform Committee members and other newsletter readers of legislation that may be of particular interest to them. The bills are grouped according to subject matter. Not surprisingly, ethics reform remains a top legislative priority.

For those bills that the Governor has signed into law when this edition went to print, public act numbers are provided. The governor has 60 days upon receipt of a bill to veto, amendatorily veto, or sign it into law. Signed laws become law on the effective date of the legislation. Bills that are vetoed or amendatorily vetoed will be considered in the fall legislative session, which this year

is scheduled for October 14-16, and 28-30, 2009.

Administrative Rulemaking

House Bill 276 amends the Illinois Administrative Procedure Act. This legislation provides that, unless specified otherwise in the Act, a State agency subject to the Administrative Procedure Act is not exempt from adopting rules pursuant to the Act covering the agency's statements of general applicability regarding law or policy affecting persons or entities outside the agency, including grant-making policy. The bill requires that all State agencies subject to the Act with grant-making authority adopt rules governing the various aspects of the grant-making process.

The Standing Committee on Government Lawyers (the Standing Committee) support-

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

ed the legislation. The bill passed the House and Senate unanimously and was sent to the Governor on June 17, 2009. The Governor issued an amendatory veto on the bill on August 14, 2009.

House Bill 398 amended the Illinois Administrative Procedure Act. This new law provides that all rulemaking authority exercised on or after the effective date of the Act is conditioned on the rules being adopted in accordance with all provisions of the Act and all rules and procedures of the Joint Committee on Administrative Rules (JCAR). Any purported rule not so adopted, for whatever reason, including without limitation a decision of a court of competent jurisdiction holding any part of this Act or the rules or procedures of JCAR invalid, is unauthorized.

The Standing Committee supported the bill which passed the House and Senate unanimously. The Governor approved the legislation on February 26, 2009, and Public Act 96-002 took effect the same day.

Government Accountability and Identity Protection

House Bill 4088 creates the Illinois Accurate Government Records Act. This bill sets forth the findings of the General Assembly and contains provisions concerning an individual's access to his or her personal records maintained by a State or local government agency. There are provisions concerning an individual's correction of his or her personal records and the limitations on an agency's disclosure of personal records. The bill contains provisions concerning the limitations on an agency's maintenance of systems of personal records and an agency's maintenance of personal records. There are provisions concerning civil remedies, agency responsibilities, and the Attorney General's responsibilities. Finally, the bill contains provisions concerning government contractors and the rights of legal guardians.

The House passed the measure unanimously. The Senate amended the legislation by making changes in the definitions for the terms "local agency" and "personal record." The amendments specify that certain provisions apply to an individual's personal records and change provisions concerning (1) access to an individual's personal records, (2) changes to an individual's personal records, and (3) limitations on an agency's (i) disclosure and (ii) maintenance of an individual's

personal records. The amendments further change provisions concerning civil remedies and the provisions concerning the responsibilities of the Attorney General. The Senate adopted the amendments and then passed the bill.

The bill was returned to the House for concurrence and was assigned to the House Rules Committee on May 30, 2009. The Standing Committee supported the Senate amendments.

Senate Bill 2178 creates the Illinois Plain Language Task Force Act. It provides that a Task Force chaired by the Governor or his designee shall conduct a study on, and propose legislative measures designed to realize the potential benefits of, incorporating plain language in State government documents and statutes and into contracts in which the State enters. The Task Force is also to study how plain language principles might be incorporated into the statutes governing contracts among private parties so as to provide additional protections to Illinois consumers, to reduce litigation between private parties over the meaning of contractual terms, and to foster judicial economy. The bill contains provisions regarding the term "plain language," the composition and duties of the Task Force, and the guidelines the Task Force must follow.

The Standing Committee supported the bill which passed the House and Senate unanimously. The Governor approved the legislation on August 13, 2009, and Public Act 96-350 took effect the same day.

House Bill 547 creates the Identity Protection Act. This Act prohibits a State or local government agency from using an individual's social security number in certain ways with various exceptions. It requires each State or local government agency to develop and implement an identity protection policy. Any employee of a State or local government agency who intentionally violates the provisions of the Act is guilty of a Class B misdemeanor. In provisions concerning the public inspection and copying of information and documents, the legislation provides that a person or State or local government agency must redact social security numbers from information or documents containing all or any portion of an individual's social security number. Each State or local government agency is required to develop and approve an identity-protection policy within 12

months after the effective date of the Act. It preempts the concurrent exercise of home rule powers and imposes conditions on any rulemaking authority.

The Standing Committee supported the proposal. The legislation passed the House and Senate and was sent to Governor on June 26, 2009.

Governmental Ethics

House Bill 260 amends the State Officials and Employees Ethics Act. The bill makes changes to the current revolving door prohibition. It sets the trigger at contracts with a cumulative value of over \$50,000 (now \$25,000) and removes the requirement that the procurement participation of the former officer, member, or State employee was "personal [] and substantial []."

The Standing Committee supported the legislation. On March 13, 2009, the bill was re-referred to the House Rules Committee.

House Bill 736 amends the State Officials and Employees Ethics Act, the General Assembly Staff Assistants Act, and the Lobbyist Registration Act. This proposal makes changes concerning the lobbying revolving door prohibition for State employees, Web site posting of legislative committee witness slips, registration requirements and exemptions for lobbyists and lobbying entities, disclosure of employment or retention of lobbyists by units of local government and school districts, reports by lobbyists and lobbying entities, gifts from lobbyists and lobbying entities to elected State officials and State employees, and investigation of and penalties for violations of the Lobbyist Registration Act.

The Standing Committee supported the legislation. On March 13, 2009, the bill was re-referred to the House Rules Committee.

House Bill 1203 amends the Illinois Governmental Ethics Act and the Lobbyist Registration Act. The bill redefines a "special government agent" who must file a statement of economic interests to include a person who, by or on behalf of a statewide executive branch constitutional officer, is directed, retained, designated, appointed, or employed to cause the making of an *ex parte* communication. The bill also requires that a special government agent file a statement of economic interests before making any *ex parte* communications (now, within 30 days after). It makes a special government agent's failure

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to file a statement a Class 4 felony. A special government agent cannot register under the Lobbyist Registration Act. The bill makes it a violation of that Act for a person required to register to act as a special government agent and for a special government agent to engage in lobbying. Finally, the proposal prohibits a person subject to the Act from accepting compensation from a State agency for lobbying legislative action, but exempts the salaries of full-time State employees with responsibilities or authority other than lobbying.

The Standing Committee supported the legislation. The bill was re-referred to the House Rules Committee on March 13, 2009.

Senate Bill 54 amends the Illinois Governmental Ethics Act, the State Officials and Employees Ethics Act, the Secretary of State Act, the Secretary of State Merit Employment Code, the Comptroller Merit Employment Code, the State Treasurer Employment Code, the Personnel Code, the Children and Family Services Act, the Department of Human Services Act, the Governor's Office of Management and Budget Act, the General Assembly Compensation Act, the Lobbyist Registration Act, the State Prompt Payment Act, the Illinois Public Aid Code, and the Whistleblower Act. Because the substantive changes to the indicated Acts are too numerous to discuss in detail, an overview of the bill is provided.

The legislation makes changes regarding statements of economic interests, prohibited sources, promise of State employment benefits, revolving door provisions, whistleblower provisions, jurisdiction of ethics commissions, activities prohibited for Executive Ethics Commission members, activities prohibited for and compensation of Executive Inspectors General, duties of Inspectors General, anonymous allegations of ethics violations, investigations of ethics violations by the Attorney General and Special Inspectors General, Inspector General investigation reports, complaint procedures, and decision review, penalties for and injunctive relief against ethics violations, State agency inspectors general, budgets of the Executive Ethics Commission and Executive Inspectors General, expenditures to defray a legislator's cost of performing governmental and public service functions, the registration and ethics training of and the reporting by lobbyists and lobbying entities, enforcement of lobbying provisions, complaints of and penalties

for lobbying violations, and political fundraising in Sangamon County. The bill takes effect immediately in part, and on January 1, 2010, in part.

The Standing Committee supported the bill, provided it would be properly funded. The bill passed the House and Senate unanimously. The Governor approved the legislation on August 18, 2009, and Public Act 96-555 generally took effect that same day. Some parts of the Public Act are not effective until January 1, 2010.

Senate Bill 1602 creates the Gubernatorial Boards and Commissions Act. It establishes ethics requirements and restrictions for current and prospective members of boards and commissions appointed by the Governor. The bill also requires that the Governor's Office of Boards and Commissions establish and maintain an Internet database of information concerning board and commission membership and requires each board and commission with a Web site and full-time information technology staff to make minutes, recordings, dates, and agendas of its meetings available on its Web site. The legislation amends the Illinois Governmental Ethics Act by requiring appointees to certain gubernatorial boards and commissions to file statements of economic interests.

The Standing Committee supported the bill which passed the House and Senate with just six dissenting votes. The Governor approved the legislation on August 17, 2009, and Public Act 96-543 took effect that same day.

Open Meetings and Freedom of Information

House Bill 793 amends the Open Meetings Act. The legislation permits a public body with statewide jurisdiction or an Illinois library system with jurisdiction over more than 4,500 square miles to include members participating in a video conference at specified locations when determining the physical presence of a quorum at an open meeting (now, a public body with statewide jurisdiction may include members participating in a video conference at specified locations when determining the physical presence of a quorum at an open meeting). The bill further provides that the requirement that members of a public body with less than statewide jurisdiction be physically present at a closed meeting does not include public bodies that are Illinois library systems with jurisdiction

over more than 4,500 square miles.

The Standing Committee supported the legislation. The legislation passed the House and Senate and was sent to Governor on June 26, 2009.

House Bill 831 creates the Public Access Counselor and Formal Complaint Act. It establishes the Governor-appointed position of Public Access Counselor to receive inquiries and publish interpretive and educational materials about the Freedom of Information and the Open Meetings acts. The counselor is required to receive complaints and issue advisory opinions on denials of access to public records and public meetings. The bill also provides for the operation of the counselor's office.

The Standing Committee opposed the bill. The House tabled the bill on March 10, 2009, on the recommendation of the sponsor, Representative Bill Black.

House Bill 4165 amends the Open Meetings Act, the Freedom of Information Act, and the Attorney General Act. It requires each public body to have a freedom of information officer to process requests for inspection and copying of public records and establishes within the Attorney General's Office an Office of the Public Access Counselor. The legislation requires the Attorney General to appoint the counselor and authorizes the counselor to issue binding opinions on a public body's compliance with the Open Meetings Act or on a public body's denial of access to public records, when requested by the denied party. Opinions of the Public Access Counselor are subject to judicial review under the Administrative Review Law.

The Standing Committee opposed the bill. It was re-referred to the House Rules Committee on April 3, 2009.

Senate Bill 189 amends the Open Meetings Act, the Attorney General Act, and most importantly, the Freedom of Information Act. This legislation was perhaps the most contentious bill for government lawyers because of the General Assembly's sweeping rewrite of the current Freedom of Information Act. In short, it gives the Attorney General's Office authority to settle disputes over what records are public through a newly created Public Access Counselor who will act as the final authority in cases where a government body has denied a request for records, documents, or other information. The legislation

also shortens the time government has to respond to record requests, and it establishes fines for violators and will cause public agencies to pay attorneys fees if they lose a court challenge.

One proponent, the Illinois Press Association, which represents many newspapers statewide, embraced the measure as a good compromise after pushing for stronger legislation.

The reform measure faced opposition from two government groups, the Illinois State's Attorneys Association and the Illinois Municipal League. Both groups wanted the Governor to make changes that many argued would make the new law inefficient and ineffective. The organizations believed the bill was too costly, a threat to law enforcement, an undue burden on local governments, and a usurpation of prosecutors' duties by the Illinois Attorney General's Office, among many other things. The state's attorneys contended that decisions that would be made by the Public Access Counselor should be made in court after they bring charges against government bodies alleged to be in violation of the law, much the same way as Open Meetings Act violations are now handled.

The Standing Committee did not take a position on the legislation. The bill passed the House and Senate with just one dissenting vote. The Governor approved the legislation on August 17, 2009, and Public Act 96-542 takes effect on January 1, 2010.

Public Interest Attorney Assistance

Senate Bill 266 creates the Public Interest Attorney Assistance Act to encourage qualified individuals to enter into and continue their employment in Illinois as assistant state's attorneys, assistant public defenders, civil legal aid attorneys, assistant Attorneys General, assistant public guardians, Illinois Guardianship and Advocacy Commission attorneys, and legislative attorneys. The bill provides that the Illinois Student Assistance Commission shall establish and administer the Public Interest Attorney Loan Repayment Assistance Program for the primary purpose of providing loan repayment assistance to practicing attorneys to encourage them to pursue careers as public interest attorneys.

The measure also provides for the distribution of funds in the form of a forgivable loan and sets forth provisions concerning the creation of an advisory committee, the application process, eligibility requirements, the maximum amount of assistance, and pri-

oritization.

The Standing Committee supported the bill. It passed both chambers of the legislature and was sent to the Governor on June 25, 2009.

State Employees

House Bill 4450 creates the Officials and Employees Termination Act of 2009. This proposal provides that the terms of office or employment of all designated officials and employees are terminated, by operation of law, effective on the effective date of the Act. The designated officials and employees are: (i) the heads, assistant heads, and deputy heads of executive State agencies who were nominated by the Governor between January 11, 1999, and January 29, 2009, for a position that requires the advice and consent of the Senate; (ii) members of executive boards or commissions who were nominated by the Governor between the dates for a position that requires the advice and consent of the Senate; (iii) employees of executive State agencies or executive boards or commissions, whose employment in a *Rutan* exempt position began between the indicated dates; (iv) employees of executive State agencies or executive boards or commissions, appointed to a term appointment between those dates; and (v) any other official or employee who was nominated by the Governor between the indicated dates for a position that requires the advice and consent of the Senate.

Executive State agencies and executive boards or commissions are those under the executive branch but not under the juris-

dition and control of the Lieutenant Governor, Attorney General, Secretary of State, Treasurer, or Comptroller. The bill allows the Governor to make temporary appointments and to subsequently nominate or employ a terminated person.

The Standing Committee did not take a position on the bill. It was re-referred to the House Rules Committee on May 31, 2009.

Miscellaneous

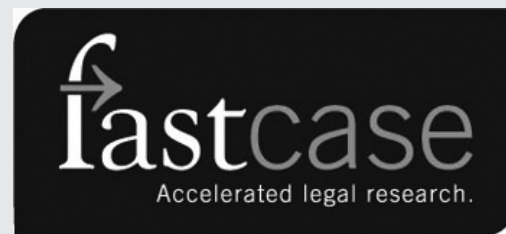
House Bill 331 amends the Code of Civil Procedure. The bill provides that in an action brought by a citizen taxpayer of the State to restrain and enjoin the disbursement of public funds by any officer of the State, the court may, in its discretion, award the prevailing party reasonable attorney fees.

The Standing Committee opposed the legislation. On March 13, 2009, the bill was re-referred to the House Rules Committee.

You can track the status of any legislative proposal by accessing the General Assembly homepage at www.ilga.gov and clicking on "Bills and Resolutions" and then the specific bill number. Or, the General Assembly has a free service to track legislation called "My Legislation." Go to the homepage, click on "My Legislation," and follow the instructions. ■

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

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Attorney General issues opinions

By Lynn Patton

Under section 4 of the Attorney General Act (15 ILCS 205/4 (West 2008)), the Attorney General is authorized, upon request, to furnish written legal opinions to State officers and State's Attorneys on matters relating to their official duties. The following is a summary of official opinion Nos. 09-001 through 09-002 and informal opinions Nos. I-09-001 through I-09-011 that may be of interest to the government bar.

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

Opinion No. 09-001 Issued February 25, 2009

Senatorial Vacancy under the Seventeenth Amendment

The seventeenth amendment expresses a preference for allowing the people of Illinois to elect a U.S. Senator to fill a vacancy. Moreover, the U.S. Constitution grants states broad authority to determine the time, place, and manner of elections to fill U.S. Senate vacancies. A law setting a special election for the U.S. Senate is consistent with that authority. Further, a temporary appointee does not possess a vested contractual right in his or her senatorial appointment that the General Assembly is constitutionally prohibited from altering through the legislative process. The constitutional right to equal protection of the laws and the prohibitions against bills of attainder and special legislation do not prohibit the General Assembly from passing a bill changing the date of an election to choose a new U.S. Senator. 10 ILCS 5/25-8 (West 2006); U.S. Const. amend. XVII.

Opinion No. 09-002 Issued March 5, 2009

Authority of Advanced Practice Clinicians to Dispense Mifepristone

Although the Federal Drug Administration requires that Mifepristone be provided "by or under the supervision of a physician," the authority of advanced practice clinicians (APCs), such as advanced practice nurses and

physician assistants, to dispense Mifepristone under a physician's supervision depends on state law. Under Illinois law, APCs may generally prescribe and dispense most classes of prescription drugs upon the delegation of a supervising or collaborating physician as described in written guidelines or agreements governing the supervising or collaborative relationship. 225 ILCS 60/54.5 (West 2007 Supp.); 225 ILCS 65/50-1 *et seq.* (West 2007 Supp.); 225 ILCS 95/7.5 (West 2006); 720 ILCS 510/3.1 (West 2006).

Informal Opinion No. I-09-001 Issued March 5, 2009

Compatibility of Offices – County Board Member and Village President

Section 1 of the Public Officer Prohibited Activities Act precludes a county board member, during his or her term of office, from simultaneously holding the office of village president. Consequently, if a county board member, during his or her term of office, is elected to the office of village president, that election is void under section 1 of the Prohibited Activities Act. Because any such election is void, a county board member who obtains the most votes in an election for the office of village president has no discretion to accept the office of village president. A sitting county board member, however, remains entitled to hold the office of county board member. Should a sitting county board member wish to seek election to the office of village president, he or she must first resign from the county board. 50 ILCS 105/1 (West 2006).

Informal Opinion No. I-09-002 Issued March 12, 2009

Compatibility of Offices – School Board Member and Township Highway Commissioner

Because of a potential conflict in duties, the offices of school board member and township highway commissioner are incompatible. 105 ILCS 5/5-29, 10-22.28a, 10-22.36A (West 2006); 605 ILCS 5/2-103, 6-102, 6-201.6 (West 2006).

Informal Opinion No. I-09-004 Issued May 7, 2009

Release of Monies From the County

Bridge Fund to Municipalities Subject to the Property Tax Extension Limitation Law

Section 5-501 of the Illinois Highway Code requires a county board to provide aid in the amount of one-half of the expenses of construction or repair of a bridge if all of the statutory prerequisites contained therein have been met, including the prerequisite that the road district or municipality seeking county aid for bridge construction or repair must have levied the maximum applicable tax rate for the prior two years. Although section 5-501 of the Highway Code expressly allows a road district to retain its eligibility if, at the time the property tax extension limitation was imposed, the road district was levying at the maximum allowable rate and continues to levy the maximum allowable amount after the imposition of the property tax extension limitation, section 5-501 contains no similar provision applicable to municipalities. Accordingly, a county board may not appropriate to, and a county superintendent of highways may not release monies from, the county bridge fund to a municipality seeking county aid under section 5-501 if the municipality has not been levying the full amount allowed by law to be extended for corporate purposes for the preceding two years, notwithstanding that the municipality is subject to the Property Tax Extension Limitation Law. 605 ILCS 5/5-501 (West 2006).

Informal Opinion No. I-09-005 Issued May 20, 2009

Compatibility of Offices – County Board Member and School Board Member

Pursuant to section 1 of the Public Officer Prohibited Activities Act, a county board member may not be elected to or hold the office of school board member simultaneously unless specifically authorized to do so by statute. If a county board member in a county of 40,000 or more inhabitants, during his or her term of office, is elected to the office of school board member, the election is void under section 1 of the Public Officer Prohibited Activities Act. Because the election is void, a county board member who receives the requisite number of votes to be elected to the office of school board member has no discretion to accept the office of school

board member. The incumbent county board member remains entitled to hold the office of county board member. 50 ILCS 105/1, 1.2 (West 2006).

**Informal Opinion No. I-09-007
Issued July 9, 2009**

**Institution of a Mandamus Action
Against a River Conservancy District**

Whether the Rend Lake Conservancy District is maintaining sufficient rates to defray all fixed, maintenance, and operating expenses under section 11 of the River Conservancy Districts Act is a factual determination that is beyond the scope of the issues that can be addressed in a legal opinion of the Attorney General. To have standing to commence an action for *mandamus* a party must have a personal or property interest in the subject matter of the complaint and must suffer some injury as a result of the complained-of conduct. 70 ILCS 2105/11 (West 2008).

**Informal Opinion No. I-09-008
Issued July 17, 2009**

**Authority of County Sheriff to Tow Motor
Vehicles from Township Roads**

Pursuant to section 4-203 of the Illinois

Vehicle Code, the county sheriff may authorize the towing of an abandoned or disabled vehicle from a township road without first obtaining a warrant or providing the owner with prior notice. 625 ILCS 5/4-203 (West 2008).

**Informal Opinion No. I-09-009
Issued July 30, 2009**

**Applicability of the Real Estate Transfer
Tax Law to the Teachers' Retirement
System**

The Teachers' Retirement System of the State of Illinois (TRS) is an agency of the State. As such, TRS constitutes a "governmental body" for purposes of the real estate transfer tax exemption established by subsection 31-45(b)(1) of the Real Estate Transfer Tax Law. Whether TRS' corporate entities were "created to carry out a public function" as provided in the administrative rules implementing subsection 31-45(b)(1), thereby qualifying them as "governmental bodies" for purposes of the real estate transfer tax exemption, is a factual determination that is beyond the scope of a legal opinion of the Attorney General. 35 ILCS 200/31-45(b)(1) (West 2008); 86 Ill. Adm. Code §120.20, as amended by 28 Ill. Reg. 14155, 14170 (effective October 13, 2004).

**Informal Opinion No. I-09-010
Issued July 30, 2009**

**Admissibility of Evidence Measuring
Speed of Vehicle Using Light Detection
and Ranging (LIDAR) Technology**

Absent a *Frye* hearing, evidence which uses light detection and ranging (LIDAR) laser technology to measure the speed of a vehicle is currently inadmissible in Illinois.

**Informal Opinion No. I-09-011
Issued July 30, 2009**

**Authority of a City and a County to
Enter into a Pre-Annexation Agreement;
Jurisdiction Over Property Subject to a
Pre-Annexation Agreement**

A city and a county may enter into a pre-annexation agreement concerning unincorporated territory owned by the county that is located within one and one-half miles of the city's corporate boundaries. The city and the county may not, via the pre-annexation agreement or through an intergovernmental cooperation agreement, agree that the county will exercise zoning authority over the property. 5 ILCS 220/5 (West 2008); 65 ILCS 5/11-15.1-1, 11-15.1-2.1 (West 2008). ■

Research resources from Illinois Academic Law Libraries

By Tom Gaylord

**Have a research project? Go back
to law school, or at least to a law
school library near you – and none
is more than a few mouse-clicks
away.**

Many law libraries—academic, firm, and government—produce in-house materials that assist their patrons in researching legal issues. Illinois has nine public and private law schools that, for the most part, make many of these materials available over the Internet.

So, while the primary audience for many of these materials might be the school's students and faculty, these resources are often very helpful for other patrons as well, be they alumni, non-alumni practitioners, or pro se individuals.

And so, proceeding alphabetically...

At my own institution, **Chicago-Kent**

College of Law, the Downtown Campus Library (which also serves the graduate Stuart School of Business) has created a series of library guides on a variety of subjects, ranging from how to find a statute, regulation, case, or article to doing foreign and international legal research.

Some handouts distributed to upper-level research and writing classes are also available, as well as tutorials that serve both the law school and the business school. The Library Guides index page is available at <<http://library.kentlaw.edu/Research/guides.htm>>.

DePaul University College of Law's Rinn Law Library has a series of 10¹ research guides that includes both legal topics (e.g., tax) and legal materials (e.g., citators). These PDF guides range in size from two pages to nine.

The guides are available at <[\[law.depaul.edu/library/student_services/research_guides.asp\]\(http://www.law.depaul.edu/library/student_services/research_guides.asp\)>. In addition, the library's "Internet Resource Project" includes lists of online resources for federal, state, county \(Cook\), and city \(Chicago\), as well constitutional law. It's available at <\[http://www.law.depaul.edu/library/student_services/irp.asp\]\(http://www.law.depaul.edu/library/student_services/irp.asp\)>.](http://www.</p>
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The **John Marshall Law School's** Louis L. Biro Law Library has a collection of research guides; however, they are only available in print within the library, and are not currently available online. The library has, however, compiled a list of research links for online research, covering federal and state resources, as well as an excellent collection of online resources arranged by topic of law. The research links are available at <<http://www.jmls.edu/library/researchlinks.shtml>>.

Loyola University Chicago School of

Law's library has also created a very nice collection of online research links, covering some topics not available elsewhere, such as resources for Latin American legal research and resources for paralegals. The research links are available at <http://www.luc.edu/law_library/resources/research.html>. Additionally, a library FAQ includes answers on how to perform specific research tasks. The FAQ is at <http://www.luc.edu/law_library/resources/research_faqs.html>.

The Northern Illinois University College of Law's David C. Shapiro Memorial Law Library includes an online research center, which generally includes subscription-only databases. However, the page also contains links, via a sidebar on the right-hand side, that provides access to general legal Web sites, as well as those for federal, Illinois, and international law. The online research center page is at <<http://law.niu.edu/law/library/onlineresearchcenter.shtml>>.

Northwestern Law School's Pritzker Legal Research Center has an integrated online research environment that includes both free and subscription resources. It includes 13 research guides setting forth how to research a particular topic, including nonlegal topics

such as news sources, historical sources, and law and economics. The "conduct research" page is at <<http://www.law.northwestern.edu/library/research/>>. Most helpful for the non-Northwestern community are the "selected topics" menu and the "getting started with..." research topics.

The Southern Illinois University School of Law library's Web site includes a wide range of research and how-to guides. These include guides on how to use the library, how to perform specific types of research tasks, and even how to use certain components of Lexis Nexis and Westlaw (such as Shepard's and KeyCite).

The guides are at <<http://www.law.siu.edu/lawlib/guides/index.htm>>. See the sidebar to the left of the page that also includes links to other online legal resources, arranged topically.

The University of Chicago Law School's D'Angelo Law Library has one of the more extensive lists of research guides, arranged by type of user, by jurisdiction (e.g. California Legal Research), and by topic (both U.S. law and foreign and international law). Topics range from the expected (e.g., environmental law) to the more esoteric (e.g., civil rights law and

the low wage worker). The research guides are at <<http://www.lib.uchicago.edu/du/e/law/db/ref>>.

Last, but not least (especially since it is my alma mater), the University of Illinois College of Law's library also has created a series of reference guides on numerous topics. Again, like many libraries, there are guides on how to use the library and where to find major titles.

There are tutorials on how to use certain materials, including *The Bluebook: A Uniform System of Citation, citators, and finding non-legal articles*. Finally, there are guides on researching different topics of law, as well as Internet research links. The reference guides are at <http://www.law.uiuc.edu/library/ref_guides.asp>.

So, don't forget your libraries (and librarians)! You might be surprised to learn that someone has already done the initial legwork to get you on the right path for your next research task. ■

Tom Gaylord is a law librarian at Chicago-Kent College of Law.

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Upcoming CLE programs

To register, go to www.isba.org/cle or call the ISBA registrar at 800-252-8908 or 217-525-1760.

October 2009

Thursday, 10/01/09 – Chicago, ISBA Regional Office—Business Succession Planning. Presented by the ISBA Trust & Estates Section and the ISBA Business Advice and Financial Planning Section.

Thursday, 10/01/09 – Webinar
Conducting Legal Research on Fastcase
Presented by the Illinois State Bar Association. *An exclusive member benefit provided by ISBA and ISBA Mutual. Register at: <https://www1.gotomeeting.com/register/246310169>. 12-1.

Friday, 10/02/09 – Champaign, I Hotel and Conference Center—Divorce Basics for Pro Bono Attorneys - 2009. Presented by the ISBA Standing Committee Delivery of Legal Services. 12-5.

Friday, 10/02/09 – Chicago, ISBA Regional Office—Illinois New Rules of Professional Conduct. Presented by the Illinois State Bar Association.

Wednesday, 10/07/09 – Webcast—Illinois New Rules of Professional Conduct. Presented by the Illinois State Bar Association. 12-1.

Thursday, 10/08/09 – Chicago, ISBA Regional Office—The Business Side of the Criminal Practice. Presented by the ISBA Criminal Justice Section.

Thursday, 10/08/09 – Webcast—Real Estate Update - 2009. Presented by the Illinois State Bar Association. 12-1.

Friday, 10/09/09 – Chicago, ISBA Re-

gional Office—Union and Employment Issues: Intersecting Challenges and Ethical Implications. Presented by the ISBA Labor and Employment Section. 9-12:30.

Monday, 10/12/09 – Chicago, ISBA Regional Office—Advanced Workers' Compensation. Presented by the ISBA Workers' Compensation Section.

Monday, 10/12/09 – Fairview Heights, Four Points Sheraton—Advanced Workers' Compensation. Presented by the ISBA Workers' Compensation Section.

Thursday, 10/15/09 – Chicago, ISBA Regional Office—Professional Strategies for Difficult Times. Presented by the Illinois State Bar Association. * This program is complimentary to ISBA members. 9-12:15 or 1:15 – 4:15.

Thursday, 10/15/09 – Bloomington, Doubletree Hotel—The Business Side of the Criminal Practice. Presented by the ISBA Criminal Justice Section.

Friday, 10/16/09 – Chicago, ISBA Regional Office—Vapor Intrusion: What you Always Wanted to Know, and Building Green: Yes it is Feasible. Presented by the ISBA Environmental Law Section and the ISBA Real Estate Section. 75 max.

Friday, 10/16/09 – Fairview Heights, Four Points Sheraton—Tackling Family Law Conundrums. Presented by the ISBA Family Law Section.

Tuesday, 10/20/09 – Lombard, Lindner Learning Center—Real Estate Law Update for the Experienced Practitioner– Fall 2009. Presented by the ISBA Real Estate Law Section.

Wednesday, 10/21/09 – Webcast
Resolving Family Law Issues. Presented by the Illinois State Bar Association.

Thursday - Saturday, 10/22/09 - 10/24/09 – Springfield, President Abraham Lincoln Hotel—5th Annual Solo & Small Firm Conference. Presented by the Illinois State Bar Association.

Friday, 10/23/09 – Chicago, ISBA Regional Office—EMTALA: Current Legal & Ethical Issues. Presented by the ISBA Health Care Section.

Monday - Friday, 10/26/09 – 10/30/09 – Chicago, ISBA Regional Office—40 hour Mediation/Arbitration Training. Master Series Presented by the Illinois State Bar Association and the ISBA Alternative Dispute Resolution Section. 8:30 – 5:45 daily.

Wednesday, 10/28/09 – Webcast—Illinois New Rules of Professional Conduct. Presented by the Illinois State Bar Association. 12-1.

Friday, 10/30/09 – Urbana, United States Federal District Court House—Pre-Trial Practice, Rule Changes, Technology and Federal Civil Practice in the Central District of IL. Presented by the ISBA Federal Civil Practice Section.

November 2009

Tuesday, 11/03/09 – Bloomington, Doubletree Hotel—Real Estate Law Update for the Experienced Practitioner – Fall 2009. Presented by the ISBA Real Estate Law Section.

Wednesday, 11/04/09 – Webcast—Corporate Legal Ethics. Presented by the Illinois State Bar Association.

Thursday, 11/05/09 – Chicago, ISBA Regional Office—The Mediation Process and Child-related Disputes. Presented by the ISBA Child Law Section, Co-sponsored by the ISBA Family Law Section and by the ISBA Alternative Dispute Resolution Section.

Monday - Friday, 11/09/09 - 11/13/09 – Grafton, Pere Marquette Lodge and Conference Center—40 hour Mediation/Arbitration Training. Master Series Presented by the Illinois State Bar Association and the ISBA Alternative Dispute Resolution Section. 8:30-5:45 each day.

Wednesday, 11/11/09 – Webcast
Illinois New Rules of Professional Conduct. Presented by the Illinois State Bar Association. 12-1.

Thursday, 11/12/09 – Webinar—Advanced Research on FastCase. Presented by the Illinois State Bar Association. **An exclusive member benefit provided by ISBA and ISBA Mutual. Register at: <https://www1.gotomeeting.com/register/938410456>*. 12-1.

Friday, 11/13/09 – Chicago, ISBA Regional Office—Insurance Law Update 2009. Presented by the ISBA Civil Practice and Procedure Section and the ISBA Insurance Law Section.

Friday, 11/20/09 – Carbondale, Southern Illinois University School of Law—Illinois New Rules of Professional Conduct. Presented by the Illinois State Bar Association, co-sponsored by SIU school of Law.

Friday, 11/20/09 – Chicago, Northwestern Law School—Avenues to Advancement – Ms. JD's Third Annual Conference on Women in Law. Presented by the ABA commission on Women in the Profession, co-sponsored by the ISBA Standing Committee on Women and the Law, National Association of Women

Lawyers, and the Chicago Bar Association.

Wednesday, 11/25/09 – Webcast—Illinois New Rules of Professional Conduct. Presented by the Illinois State Bar Association. 12-1.

December 2009

Wednesday, 12/02/09 – Webcast—Illinois New Rules of Professional Conduct. Presented by the Illinois State Bar Association. 12-1.

Thursday, 12/03/09 – Webcast—Divorce Basics for Pro Bono Attorneys - 2009. Presented by the Illinois State Bar Association. <<https://isba.fastcse.com/store/seminar/seminar.php?seminar=2670>>.

Thursday, 12/10/09 – Chicago, ARDC Office—What the Government Lawyer Needs to Know about the 2010 Illinois Rules of Professional Conduct. Presented by the ISBA Standing Committee Government Lawyers. 10-12. 50-75 max.

Thursday - Friday, 12/10/2009 - 12/11/2009 – Chicago, Sheraton Hotel—Winter CLE Fest. Presented by the Illinois State Bar Association.

Wednesday, 12/16/09 – Webcast—Illinois New Rules of Professional Conduct. Presented by the Illinois State Bar Association. 12-1.

Thursday, 12/17/09 – Webinar
Conducting Legal Research on Fastcase Presented by the Illinois State Bar Association. **An exclusive member benefit provided by ISBA and ISBA Mutual. Register at: <https://www1.gotomeeting.com/register/265808616>*. 12-1. ■



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