



2021

Newly Elected Officials Seminar

Emmanuel Chris Welch
Speaker of the Illinois House of Representatives

Introduction to the legal issues in Zoning
Nick Standiford, Schain Banks

Collective Bargaining Agreements for Newly Elected Officials
Karl Ottosen, Ottosen DiNolfo Hasenbalg & Castaldo, Ltd

FOIA and Open Meetings Act
Julie Tappendorf, Ancel Glink

The Tort Immunity Act
Scott Uhler & Jim Ferolo, Klein, Thorpe & Jenkins



Introduction to the legal issues in Zoning

Nick Standiford, Schain Banks

No materials Available at this time

If materials become available, they will be Emailed to you 3-4 days after the seminar



**Collective Bargaining Agreements for Newly Elected
Officials**

Karl Ottosen, Ottosen DiNolfo Hasenbalg & Castaldo, Ltd

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Newly Elected Officials - Legal Training

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10 Things Elected Officials Need to Know

1. 10 Things to Know About Municipal Government
2. 10 Things to Know About FOIA
3. 10 Things to Know About OMA
4. 10 Things to Know About Public Comment
5. 10 Things to Know About Board Procedures
6. 10 Things to Know About Ethics
7. 10 Things to Know About Social Media

JULIE TAPPENDORF
ANCEL GLINK, P.C.

10 Things To Know About Municipal Government

Julie A. Tappendorf, Ancel Glink

1. **MUNICIPALITIES:** Municipalities are created by state law, and specifically authorized and governed by the Illinois Municipal Code and the Illinois constitution.
2. **VILLAGE BOARD/CITY COUNCIL FORM OF GOVERNMENT:** The most common form of municipal government is the village board or city council form of government.
3. **BRANCHES OF GOVERNMENT:** Most municipal government consists of three “branches” of government. In the case of cities and villages, those 3 branches include the executive, legislative, and administrative.
4. **EXECUTIVE BRANCH:** The mayor or village president serves as the “CEO” of a city or village. He or she is responsible for seeing that laws are enforced, has appointment authority over certain officers, and chairs the meetings of the corporate authorities, among other statutory powers.
5. **LEGISLATIVE BRANCH:** The board of trustees or city council serves as the legislative branch of a city or village. The board or council is the “policymaking” branch of local government. Statutory powers include the authority to establish salaries, create offices, and consent to the mayor/village president’s appointments. It is important to remember that the power of the legislative branch is exercised collectively, not individually. Depending on the action being taken, a majority (and sometimes a supermajority) vote of the corporate authorities will be required to take action on a particular policy or other matter.
6. **ADMINISTRATIVE BRANCH:** Many municipalities have created the position of manager or administrator to serve as the administrative branch of a city or village. The manager or administrator has the authority over most employee decisions, including hiring, firing, discipline, and oversight (with certain exceptions), oversight of the day-to-day operation of the city or village, and any other duties delegated by the corporate authorities.
7. **SPECIAL FORMS OF GOVERNMENT:** Note that some municipalities operate under a different statutory form of government such as strong mayor, village manager form of government, or commission form of government. Special rules on voting, veto power, appointment authority, and various other procedures apply to these special forms of government.
8. **DILLON’S RULE:** A non-home rule municipality derives its powers through state statute, either expressly or impliedly. That means that in order to take some action, create new policy, or make a law, a non-home rule municipality must look to state statute to find either express or implied authority for that action, policy, or law.
9. **HOME RULE:** Home rule municipalities have “super powers” under state statute. That special designation is automatic when a municipality reaches 25,000 in population or can be enacted by referendum.
10. **CHARTER:** A few Illinois municipalities were created by charter, which often provides additional sources of authority for the charter municipality.

10 Things To Know About FOIA

Julie A. Tappendorf, Ancel Glink

1. **PRESUMPTION OF OPENNESS:** The presumption of FOIA is open records and transparency – remember the “spirit” of the law is to provide members of the public with access to inspect or copy records.
2. **APPLIES TO RECORDS:** Although it’s called Freedom of Information Act, it applies to public records, not information. So, you need not answer questions under FOIA, nor do you need to explain what public records mean. You also do not need to create a record to respond to FOIA. As an example, a reporter asked a public body for a timeline of each license complaint – the court said this was not required by FOIA, although records would still need to be released.
3. **FORMAT:** A record must be provided in the format requested if it exists in that format – for example, if you maintain a record in Excel format, and the requester asks for it in Excel format, it is not enough to provide a PDF version.
4. **REASONABLE SEARCH:** According to an Attorney General opinion, a public body must conduct a search “of all records systems likely to contain responsive records” in response to a FOIA request. That meant that a public body has to demonstrate that it searched all of its recordkeeping systems to justify a denial.
5. **UNDULY BURDENSOME:** Whether a request is “unduly burdensome” and can be denied depends on the scope of the request and the nature of the public body (i.e., staffing). Before utilizing this procedure, however, you must ask the requester to narrow the request to a more manageable proportion.
6. **EXTENSIONS:** FOIA provides a 5 day “by-right” extension, but you can always agree to a longer extension period with the requester.
7. **EMAILS:** E-mails, texts, and other electronic communications about government business are likely to be subject to FOIA, and the Attorney General has taken the position that it doesn’t matter whether the communication was sent on a government or private device or account. According to an appellate court decision, e-mails and text messages sent by members of a public body on their private devices might be releasable under FOIA if they are (1) sent to a majority of a public body; (2) forwarded to or from an official public body email account; or (3) sent or received during a public meeting.
8. **FEES:** You can charge a reasonable fee for providing copies of records. However, you cannot charge a fee for electronic records or to make a copy for your internal file or to scan in and redact a record. You also cannot pass on third party costs (i.e., what your engineer or attorney charges you to search and provide records). Note there are special fee rules that apply to commercial and voluminous requests, and to recurrent requesters.
9. **PAC REVIEW:** In responding to a PAC request for review, be prompt, courteous, and helpful. Cite to applicable opinions and cases.
10. **FOIA POLICY:** Consider adopting a policy to help administer FOIA more easily – identify the FOIA officers who receive and respond to requests and adopt forms to make it easier to respond to requests (i.e., denials, extensions, etc.)

10 Things To Know About OMA

Julie A. Tappendorf, Ancel Glink

1. **PRESUMPTION OF OPENNESS:** The presumption of the OMA is that the business of public bodies must be conducted in a transparent manner at meetings that have been noticed to the public and that the public can attend.
2. **DEFINITION OF “MEETING” IS KEY:** The OMA defines a meeting as a *gathering of a majority of a quorum* of a public body for the *purpose of discussing public business*. On a 7 member body, 3 members should not discuss public business outside of a properly noticed meeting. Staff meetings and political or social events generally do not fall under the OMA.
3. **ELECTRONIC COMMUNICATIONS:** Emails, texts, and social media posts, if contemporaneous, can trigger a “meeting” requiring compliance with the OMA. Members of public body should not send or respond to emails that involve a majority of a quorum of the public body and should also avoid the use of “reply to all” whenever possible.
4. **ELECTRONIC PARTICIPATION:** Members of a public body can participate in a meeting electronically if (1) the body has adopted a policy authorizing electronic participation; (2) the member is absent because of illness, business, or an emergency; (3) a quorum is physically present at the meeting; and (4) the body approves the member’s electronic attendance. Note that there is an alternative method of remote participation that eliminates these conditions when a disaster declaration is in place (i.e., COVID-19 pandemic)
5. **ANNUAL SCHEDULE OF MEETINGS:** Each public body must adopt an annual schedule of its regular meetings before the beginning of the calendar or fiscal year. If a public body fails to adopt an annual schedule, its meetings will be considered special meetings and subject to additional notice obligations.
6. **AGENDAS:** There is no statute describing how items are placed on an agenda but a body can adopt a local policy identifying who has that authority (i.e., mayor, manager, certain number of trustees). Agenda items must be sufficiently descriptive to inform the public of the general subject matter of an item that will be voted on. If an item is not on the agenda, it can be discussed (at a regular, but not special, meeting) but not voted on.
7. **ELECTED OFFICIAL EMAILS:** The OMA requires a public body to post on its website a hyperlinked single email address or individual email addresses of elected officials for members of the public to contact the officials by email.
8. **CLOSED SESSIONS:** The OMA authorizes (but does not require) closed meetings to discuss certain topics such as pending litigation, certain personnel matters, among others. The public body must cite to the applicable exception in the motion to go into closed session, and that motion must be approved by a roll call vote.
9. **RECORDINGS:** Closed sessions must be recorded but not open meetings. A recording must be kept for 18 months and thereafter can only be destroyed if the body has approved minutes for that closed session (but the minutes do not have to be released to the public).
10. **PUBLIC COMMENT:** A public comment period must be provided at every meeting of a public body, including subsidiary bodies. If the public body places any limitations on public comment, (i.e., time limits), the body must adopt a written public comment policy.

10 Things To Know About Public Comment at Meetings

Julie A. Tappendorf, Ancel Glink

1. **REQUIRED AT ALL MEETINGS:** According to the Attorney General, public comment period must be provided at every meeting of a public body. Alternative forums such as “Coffee with the Mayor,” or “Town Halls” do not excuse a public body’s duty to provide an opportunity for public comment at all meetings that are subject to the OMA.
2. **APPLIES TO SUBSIDIARY BODIES:** The requirement to provide public comment at every meeting applies to subsidiary bodies, including commissions, boards, and committees.
3. **WRITTEN RULES ARE REQUIRED:** The Attorney General has interpreted the OMA to require public bodies to adopt a written public comment policy. It is important that a written policy be in place if the public body places any limitations on public body, such as time limits for public comment or a designation of the public comment period.
4. **CONTENT:** A public body cannot restrict the subject matter or content of a speaker’s public comments. That means a public body cannot limit comments to agenda topics.
5. **COMMENT, NOT DEBATE:** A public body need not respond to comments or answer questions during public comment.
6. **TIME LIMITS:** A public body can adopt a policy to limit the time for public comment on a per speaker basis, as well as restricting the total time allowed for a public comment period. Rules restricting public comment to 3 minutes per speaker and 30 minutes overall have been upheld by the Attorney General.
7. **SPEAKER QUALIFICATIONS:** A public body cannot require a speaker to disclose his or her address as a condition to speaking. A public body also cannot restrict public comment to residents only or adopt rules that prefer residents.
8. **AGENDA:** Public comment does not have to be listed on the agenda. Nevertheless, it is a good practice to list public comment on every agenda and to adopt a rule designated a particular time period at a meeting where public comment will be allowed. The decision of when to allow public comment (beginning of meeting, end of meeting, or any time in between) is up to the public body.
9. **ADVANCE REGISTRATION:** A public body should not establish pre-registration rules that are unreasonable such as requiring registration 5 days in advance of a meeting.
10. **RULES ON DECORUM:** A public body can establish and enforce rules on decorum so long as those rules are written and adopted by the public body. That means that a public body can remove a member of the public for repeated violations of these rules of decorum.

10 Things To Know About Board Procedures

Julie A. Tappendorf, Ancel Glink

1. **ROBERTS RULES OF PROCEDURE:** Many municipalities have adopted Roberts Rules of Procedure to guide their meetings. Note that Roberts Rules were intended for large assemblies, so some rules may not be appropriate for, or apply to municipal bodies. It can provide helpful guidance but need not be strictly applied in the municipal context.
2. **LOCAL RULES OF PROCEDURE:** A board is not required to follow Roberts Rules of Procedure and could choose to adopt its own local procedural rules.
3. **STATE LAW TAKES PRECEDENCE:** Roberts Rules of Procedure is a “generic” handbook used by both governmental and non-governmental bodies. To the extent that Roberts Rules or any local rules of procedure conflict with the Open Meetings Act, the Illinois Municipal Code, or other state law, state law must be followed.
4. **MAYOR/PRESIDENT ROLE AT MEETING:** The mayor or president is the presiding officer at board meetings, and has the duty to open the session, call members to order, announce the business before the board, recognize members who wish to speak, state and put to a vote all action items, rule on procedural matters, and keep the proceeding moving.
5. **BOARD/COUNCIL ROLE AT MEETING:** The board may punish its members for disorderly conduct, compel the attendance of absent members, and vote on both substantive and procedural matters, and exercise other procedural powers.
6. **VOTE REQUIREMENTS:** Any matter involving the adoption of an ordinance for whatever purpose or a resolution or motion creating a liability against the city or requiring the expenditure or appropriation of money requires approval by a majority of the entire corporate authorities. Other matters not required by statute to receive any particular vote may be adopted by a simple majority of the body.
7. **RECORDING OF VOTES:** In voting on all ordinances and on all resolutions or motions creating liabilities or for expenditures, the yeas and nays of each member should be taken and recorded in the minutes of the board.
8. **ROLL CALL OR VOICE VOTE:** When the statutes or local ordinances do not require a roll call vote, a voice vote is sufficient. Even when a voice vote is permissible, at the request of any board member the yeas and nays must be taken in the passage of any resolution or motion and recorded in the minutes. When in doubt, take a roll call vote.
9. **CONSENT OR OMNIBUS AGENDA:** By unanimous consent, the board may agree to take a single vote by yeas and nays on the question of the passage of two or more designated ordinances, orders, resolutions, or motions. The items that have been placed together for voting purposes are to be entered into the minutes under the designation “omnibus vote,” and the names of the members and their votes on the total package of items are to be recorded.
10. **QUORUM:** A quorum of a municipal board or council is required to conduct any business at a meeting. If there is no quorum, there are only 3 permissible actions: (1) contact absent members to try to get a quorum; (2) continue the meeting to another date; or (3) adjourn.

10 Things To Know About Ethics

Julie A. Tappendorf, Ancel Glink

1. **BAN ON GIFTS:** The Illinois Gift Ban Act prohibits both the giving and receiving of a “gift” from a “prohibited source” and a government official or employee. There are numerous exceptions, but as a general rule, government officials and employees should not accept items of value from people or companies that do business with the government. An official or employee can also donate, return, or pay for the prohibited gift.
2. **CONTRACTS:** Various Illinois laws prohibit government officials from entering into contracts with their government, and from purchasing government property. There are exceptions for certain “minor” contracts, but these exceptions are limited.
3. **CONFLICTS OF INTEREST:** Similarly, Illinois law prohibits a government official from having a conflict of interest that would result in their having a financial interest in any action that would come before the board on which the official sits and would be called to act or vote. In some cases, a particular conflict could disqualify the official from continuing to serve in office, and recusal may not be legally sufficient to resolve a conflict.
4. **APPEARANCE OF IMPROPRIETY.** Even where there is not a statutory conflict of interest in a particular action before the board, there may be a situation where action by an official could raise an “appearance of impropriety”. If an official believes he or she cannot be impartial in a particular matter, the official could abstain from the matter. However, officials should remember they have a duty to represent their constituents, and should abstain or recuse themselves from matters only when appropriate or necessary.
5. **BRIBES:** A government official cannot take a bribe to influence his or her vote.
6. **CAMPAIGNING:** Illinois law prohibits government officials and employees from campaigning for any candidate or referendum question on “compensation time.”
7. **USE OF GOVERNMENT RESOURCES:** The law also prohibits government officials and employees from using government resources (money, property, or staff) to campaign, solicit votes or donations, or any other political activities.
8. **DISCLOSURE OF ECONOMIC INTERESTS:** Most government officials and some employees must file annual disclosures of their economic interests.
9. **OFFICIAL MISCONDUCT:** Government officials may be guilty of official misconduct if they: (a) intentionally fail to perform a mandatory duty; (b) knowingly perform an act that is against the law; (c) perform an act outside their authority with the intent to profit; or (d) solicit a bribe.
10. **FIDUCIARY DUTY.** Every government official has a “fiduciary” duty to the government, meaning that they have an obligation to conduct themselves in the best interests of the government and not in their own personal, financial interests.

10 Things To Know About Social Media

Julie A. Tappendorf, Ancel Glink

1. **PUBLIC RECORD:** Posts, comments, and other activities on government social media sites are probably a public record.
2. **RECORDS RETENTION:** The Illinois State Archivist has published guidelines on retention of social media content to ensure compliance with the Illinois Local Records Act. As a general rule, government posts are subject to the municipality's record retention/destruction policy. Posts made by others will only need to be retained in certain circumstances.
3. **FIRST AMENDMENT:** Government social media sites and activities are likely to be subject to the First Amendment. According to recent court rulings, government social media sites may be considered a designated or limited public forum, meaning that the government must be careful not to take actions that might violate someone's free speech rights.
4. **COMMENT MODERATION:** Because of the protections offered by the First Amendment, governments should be careful when moderating comments posted on government social media sites. For example, governments should avoid censorship of purely negative or critical speech, which may be protected free speech. Train your moderators!
5. **TOS FOR COMMENTS:** Although governments must consider the First Amendment in moderating comments and posts on government sites, that does not mean that all speech must be allowed. Governments should consider adopting a comment policy to put people on notice of the type of comments that are not appropriate on the government social media site. For example, a comment policy might prohibit threats, advertisements, illegal activity, and other comments that are not protected speech.
6. **OPEN MEETINGS ACT:** Members of public bodies should be careful not to "gather" on social media in a way that would trigger the OMA. So, a majority of a quorum of a body should not contemporaneously discuss government business on social media.
7. **ELECTED OFFICIALS AND SOCIAL MEDIA:** A few cases, including one involving the President's Twitter account, have held that an elected officials' personal social media account can be a public forum subject to the First Amendment. Whether a personal account will be a public forum depends on a number of factors, including whether the government official identifies his or her position, uses government staff to post on the official's behalf, and posts about government business on the personal page. If it is a public forum, elected officials should be cautious in deleting comments or banning users.
8. **COPYRIGHT LAWS:** Governments are not exempt from copyright laws. So, a good tip is to create your own content to post on your social media sites (i.e., photos and videos).
9. **EMPLOYEES:** Some employees will behave badly on social media, even government employees. Make sure your employees understand your employee social media use policy and that even off-duty social media activities could violate that policy and result in discipline. Be careful not to punish protected speech. Conduct regular trainings.
10. **POLICY:** All governments should adopt a social media policy that includes provisions regarding social media comments, records retention, and employee use policies.

A portrait of Julie A. Tappendorf, a woman with long brown hair, smiling and wearing a black top. She is standing in front of a modern building with many windows. The image is partially obscured by a semi-transparent white box containing her name and title.

Julie A. Tappendorf

Equity Partner

Julie Tappendorf is an equity partner with Ancel Glink in Chicago. For more than 20 years, she has focused her practice on representing and advising municipalities, counties, libraries, and other units of local government on general government, litigation, and land use issues.

Julie has published a number of books on government topics, including government use of social media, land use, compliance with local records and meetings laws, as well as a number of articles on government-related topics. She is a frequent speaker at local and national conferences on FOIA, OMA, ethics, social media, land use, and other local government topics. She regularly conducts trainings on compliance with FOIA and the Open Meetings Act, board procedures, ethics, and conducting zoning hearings.

Julie currently serves as City Attorney for Park Ridge and Lake Forest, and Village Attorney for Glenview, Gilberts, and Lindenhurst. She also serves as special counsel to a number of other government bodies in a variety of matters.

Prior to her law career, she served in the U.S. Army, Military Intelligence Branch, as a Korean cryptologic-linguist.

Julie is the author and moderator of the popular local government blog [Municipal Minute](http://www.municipalminute.ancelglink.com), where she writes about local government issues.

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Lake County Bar Association

Tort Immunity
Knowing the Contours of the Uneven
Playing Field

Presented by: Scott F. Uhler
James V. Ferolo
Klein, Thorpe & Jenkins, Ltd.
Offices: Chicago/Lincolnshire
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- **Definition of Employee**

An “employee” is defined under the Act to include a present or former officer, member of a board, commission or committee, agent, volunteer, servant or employee, whether or not compensated, but does not include an independent contractor. 745 ILCS 10/1-202.

Definition of Employee

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- **Definition of Local Public Entity**

To be a public employee, an individual must be an employee of a "local public entity" which, under Section 10/1-206 of the Act, specifically includes a county, township, municipality, municipal corporation, school district, school board, educational service region, regional board of school trustees, trustees and treasurers of schools of townships, community college district, community college board, forest preserve district, park district, fire protection district, sanitary district, museum district, emergency telephone system board, and all other local governmental bodies, but does not include the State or any office, officer, department, division, bureau, board, commission, university or similar agency of the State.

Public Entity

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- **Article II, Part I- Immunity of Public Entities**

- Article II, Part I of the general immunity provisions of the Act provides that local public entities are not liable for the following:
- Section 10/2-102 (payment of punitive or exemplary damages);
- Section 10/2-103 (adoption or failure to adopt an enactment or for failure to enforce the law);
- Section 10/2-104 (issuance, denial, suspension or revocation of permit, etc.);
- Section 10/2-105 (failure to inspect or negligent inspection of property);
- Section 10/2-106 (oral promise or misrepresentation);
- Section 10/2-107 (slander or the provision of information) ;
- Section 10/2-108 (granting or failing to grant public welfare goods or monies); and
- Section 10/2-109 (public entity not liable where employee is immune).

Immunity of Public Entities

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- **Article III-Immunity for Use of Public Property**

Article III of the Act provides local public entities immunity from injuries that happen from the foreseeable use of its property. 745 ILCS 10/3-102.

Use of Public Property

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- Section 3-102 (A governmental entity has a duty to exercise ordinary care in the maintenance of its property);
- Section 3-103 (Injury caused by design defect);
- Section 3-104 (Failure to provide traffic signals);

Use of Public Property

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- Section 3-105 (Weather conditions on roadways or the failure to upgrade roadways);
- Section 3-106 (Injury on recreational property barring willful and wanton conduct);
- Section 3-107 (Injury on recreational trails);

Use of Public Property

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- Section 3-108 (Failure to supervise use of public property barring willful and wanton conduct);
- Section 3-109 (Injuries resulting from hazardous recreational activity);
- Section 3-110 (Injury on or adjacent to waterway not owned or controlled by a public entity).

Use of Public Property

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- **Duty to Exercise Ordinary Care**
Section 3-102

A local public entity, however, still has the duty to exercise ordinary care in the maintenance of its property (745 ILCS 10/3-105(c)), but the duty extends only to "intended and permitted users" of public property. 745 ILCS 10/3-102.

Use of Public Property

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- **Recreational Property-Section 3-106**

There is no liability for an injury caused by a condition on public property intended or permitted to be used for recreational purposes, unless the conduct is willful and wanton. Under Section 3-106, municipalities are immune from liability for injuries occurring on public property that is intended or permitted to be used for recreational purposes.

Use of Public Property

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- **Supervisory Immunity Section 3-108**

Except as otherwise specifically provided in the Act, neither a local public entity nor a public employee who undertakes to supervise an activity on or the use of any public property is liable for an injury unless the local public entity or public employee is guilty of willful and wanton conduct in its supervision proximately causing such injury.

Supervisory Immunity

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- **Article II, Part II- Immunity of Public Employees**

Article II, Part II of the general immunity provisions of the Act addresses the immunity of public employees. Liability of municipal officials and employees is less complete than that of municipalities. By virtue of Section 2-109, the same protection from liability extends to the public entity for which the employee is working. Public Employees and thus local public entities cannot be liable if the following Part II immunities apply:

Protection of Public Employees

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- Section 2-201 (Determination of policy or exercise of discretion);
- Section 2-202 (Execution or enforcement of law);
- Section 2-203 (Acts under unconstitutional, invalid or inapplicable enactment);
- Section 2-204 (Acts or omissions of another person);

Protection of Public Employees

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- Section 2-205 (Adoption or failure to adopt enactment - Failure to enforce law);
- Section 2-206 (Issuance, denial, suspension or revocation of permit, etc.);
- Section 2-207 (Inspection of property - Failure to make or negligent inspection);
- Section 2-208 (Institution or prosecution of judicial or administrative proceeding);

Protection of Public Employees

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- Section 2-209 (Entry upon property if entry is expressly and or impliedly authorized by law);
- Section 2-210 (Negligent misrepresentation - Provision of information);
- Section 2-211 (School safety patrol - organization, maintenance and operation);
- Section 2-212 (Joint action);
- Section 2-213 (No liability for punitive damages when exercising discretion); and
- Section 2-214 (court volunteer).

Protection of Pubic Employees

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- Public officials are also immune from liability for acts falling within their official discretion under Section 10/2-201 of the Act which provides:
- Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused. 745 ILCS 10/2-201.
- Section 2-201 codifies the common law distinctions of discretionary and ministerial functions. Snyder v. Curran Township, 167 Ill.2d 466, 473, 657 N.E.2d 988 (1995).

Discretionary Immunity 2-201

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- “According to the statute, an employee may be granted immunity if he holds either a position involving the determination of policy or a position involving the exercise of discretion. The statute is equally clear, however, that immunity will not attach unless the plaintiff's injury results from an act performed or omitted by the employee in determining policy and in exercising discretion.” Harinek 181 Ill.2d 335, 341.

Harinek v. 161 N. Clark Street

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Execution or Enforcement of the Law- **Section 2-202 of Illinois Tort Immunity Act**

- A public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct.
- Willful and wanton conduct is defined as intent or acting with reckless disregard for the safety of others.
- Not enough to get it wrong or make a mistake for liability to attach.

Law Enforcement

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- **Arnolt 52 Ill. 2d 27 (1972)**
 - Determination of execution and enforcement is a factual determination that must be made in each case
 - 2-202 was not meant to provide blanket immunity for the negligent performance of all acts on duty.
- **Arnolt provided as follows:**
 - all activities of a public employee are not immune from liability;
 - only those activities performed while on duty and in the execution or enforcement of the law are immune;
 - both "execution or enforcement of the law" should be given "their plain and commonly ascribed meaning"; and,
 - the facts of each case should be examined in the light of the circumstances of each case.

Law Enforcement

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- The immunity does not attach to all duties of law enforcement personnel.
- Only applies to the actual execution or enforcement of the law.
- Routine elements of police work are not covered by the immunity such as:
 - Transporting a prisoner ;
 - Engaging in routine patrol;
 - Investigating a missing person's report;
 - Assisting in a pursuit by being available.

Limitations on 2-202 Immunity

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- Section 2-202 requires a course of conduct that is more significant than a routine call
- *Leaks v City of Chicago* 238 Ill app 3d 12 (1992) (routine patrol)
 - Squad car collision with plaintiff car
 - Officer was stopped to call in a suspicious persons call
 - Reversed into a car
 - Claimed that investigating loitering claim was enough to change standard to WW. Court disagreed/
 - Routine in nature thus negligence applied

Law Enforcement

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- Immunity does attach when an officer is engaged in a course of conduct designed to carry out or put into effect any law.
 - *Fitzpatrick v. Chicago*, 112 Ill.2d 211 (1986)
 - *Stehlik v. Orland Park*, 359 Ill Dec. 107 (1st Dist 2012) Investigating a traffic road rage altercation;
 - *Thompson v. Chicago*, 108 Ill.2d 429 (1985) Quelling a disturbance at a rock concert;
 - *Trepachko v. Village of Westhaven*, 184 Ill.App. 3d 241 (1st Dist. 1989) Writing a traffic ticket.

Law Enforcement

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- Neither a local public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service or, if police protection service is provided, for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals.

Failure to Establish PD-4-102

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- Neither a local public entity nor a public employee is liable for failure to provide a jail, detention or correctional facility, or if such facility is provided, for failure to provide sufficient equipment, personnel or facilities therein.

Failure to Provide a Jail 4-103

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- Neither a local public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but a public employee, and the local public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know from his observation that the prisoner is in need of immediate medical care and fails to take reasonable action to summon medical care.

Failure to provide Medical Care

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- Public Duty Rule- provided that local governmental entities and its employees owe no duty of care to individual members of the general public to provide governmental services such as police and fire protection services.
- In *Coleman v East Joliet Fire Protection District* 2016 IL 117952 the Illinois Supreme Court Abolished the Public Duty Rule.

Common Law Public Duty Rule

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- Facts:
- Wrongful death action related to botched response to an emergency call by ambulance crew arrived at scene but left because no one answered the door. Patient died of cardiac arrest.
- Summary Judgment granted by trial court based on Public Duty Rule and various sections of the Tort Immunity Act.
- Issue of duty distinct from defense of immunity.

Public Duty Rule

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- Court found that the public duty rule was inconsistent with various immunities which create exceptions for willful and wanton conduct
- It is absolute in nature.

Public Duty Rule

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- **Failure to Establish a Fire Department: Section 5-101**

- Neither a local public entity or public employee is liable for failure to establish a fire department or otherwise provide fire protection, rescue or other emergency services. 745 ILCS 10/5-101. The term "rescue services" includes, but is not limited to, the operation of an ambulance as defined in the Emergency Medical Services (EMS) Systems Act, 210 ILCS 50/1, et seq. (the "EMS Act").

Fire Protection Related Immunity

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- **Failure to Suppress or Contain Fire-Section 5-102**

- Neither a local public entity or public employee is liable for an injury for the failure to suppress or contain a fire or the failure to provide sufficient personnel. If fire protection service is provided, an employee is not liable for an injury resulting from the failure to suppress or contain a fire or from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities. 745 ILCS 10/5-102.

Fire Fighting

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- **Condition of Fire Protection Equipment or Facilities - Section 5-103(a)**

- In regard to fire protection equipment and facilities, neither a local public entity, nor a public employee acting in the scope of his employment, is liable for an injury resulting from the condition of fire protection or firefighting equipment or facilities. 745 ILCS 10/5-103(a).

Fire Fighting

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- **Immunity While Engaged in Fighting a Fire- Section 5-103(b)**

Section 10/5-103(b) provides that neither a local public entity, nor a public employee acting in the scope of his employment, is liable for an injury caused by an act or omission of a public employee while engaged in fighting a fire. However, this section does not apply if the injury is caused by the willful and wanton conduct of the public employee.

Fire Fighting

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- **Road Damage Caused by Firefighting Equipment- Section 5-104**

In general, no trustee, officer or employee of a fire protection district or fire department having a mutual aid agreement with such district, nor any such fire protection district or department, shall be liable for damage caused to bridges and roads thereon, owned by the State or by a unit of local government, when such damage is caused by fire fighting equipment crossing bridges and roads thereon, for which load limits are lower than the weight of such equipment, when responding to an alarm or returning therefrom. 745 ILCS 10/5-104.

Fire Fighting

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- **Immunity Related to the Operation of Firefighting Equipment: Section 5-106**

Except for willful or wanton conduct, neither a local public entity, nor a public employee acting within the scope of employment, is liable for an injury caused by the negligent operation of a motor vehicle or firefighting or rescue equipment, when responding to an emergency call, including transportation of a person to a medical facility. 745 ILCS 10/5-106.

Fire Fighting

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- **THE TORT IMMUNITY ACT AS A DEFENSE**

In applying the Act to defend against a lawsuit, it is important to note that immunity is an affirmative matter properly raised under a Section 2-619(a)(9) motion to dismiss. Van Meter v. Darien Park District, 207 Ill. 2d 359, 367, 799 N.E.2d 273 (2003). The local public entity has the burden of proof to establish this affirmative defense. Id. at 370. Where a motion to dismiss is unsuccessful, often times a summary judgment motion is a viable follow up option.

- One year limitations period.

Defending Lawsuits

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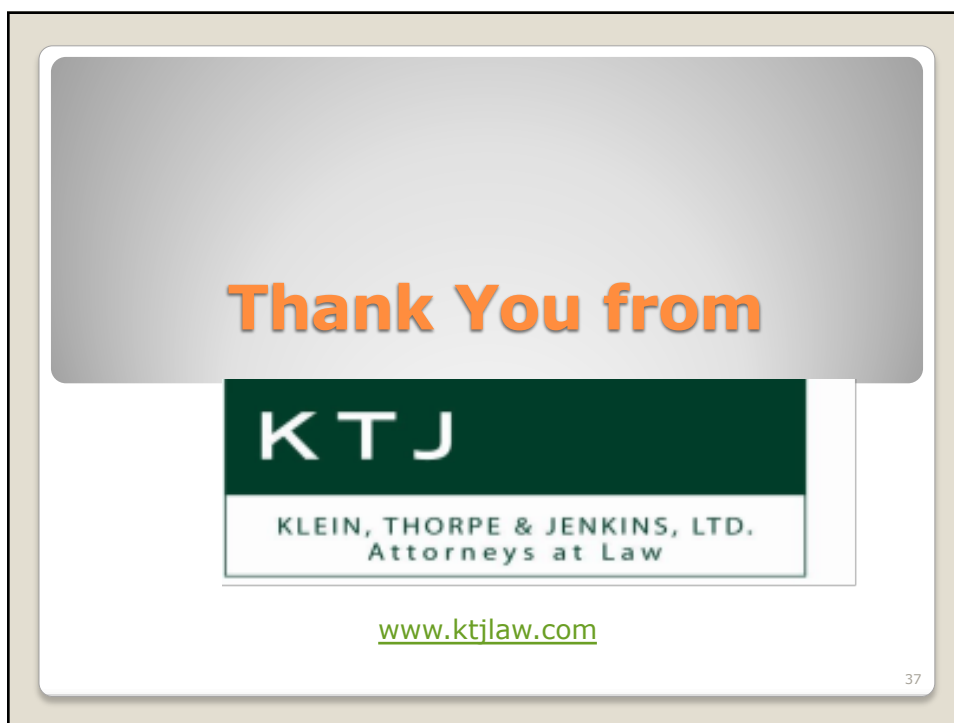
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- Contract
- Workers' Compensation Act
- Workers' Occupational Diseases Act
- Federal Civil Rights Violations

Causes Not Immunized

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