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State and Local Government

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Richard Troy* and Theresa Fehringer**

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I. INTRODUCTION

During the *Survey* year, the Illinois courts addressed various issues in local and state government law including constitutional challenges to local ordinances,¹ employment disputes involving public entities,² the Local Governmental and Governmental Em-

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1. See *infra* notes 11-50 and accompanying text.

2. See *infra* notes 51-115 and accompanying text.

ployees Tort Immunity Act,³ state licensing,⁴ annexation,⁵ and the Illinois constitution's referenda provisions.⁶ Although the Illinois courts did not make substantial changes in the law during the *Survey* year, they did resolve several controversies existing in state and local government law.

Additionally, the Illinois General Assembly passed several bills relating to state and local government.⁷ They include The School Reform Act,⁸ The Local Government Debt Reform Act,⁹ and The Local Government Act.¹⁰

II. CONSTITUTIONAL CHALLENGES TO LOCAL ORDINANCES

The Illinois Supreme Court considered two constitutional challenges to local ordinances during the *Survey* year.¹¹ Both challenges alleged a violation of the equal protection clause of the 14th Amendment.¹²

A. Equal Protection Challenge to CTA Immunity

Section 27 of The Metropolitan Transit Authority Act ("MTA Act")¹³ absolves the Chicago Transit Authority ("CTA") of liability in tort for criminal acts of third parties. Section 27 of the MTA Act provides in part, "neither the [CTA], the members of its board nor its officers or employees shall be held liable. . . for failure to provide adequate police protection or security, failure to prevent the commission of crimes by fellow passengers or other third persons or for the failure to apprehend criminals."¹⁴

In *Bilyk v. Chicago Transit Authority*,¹⁵ the court upheld the MTA Act as constitutional. In *Bilyk*, a rider sued the CTA for

3. See *infra* notes 118-133 and accompanying text.

4. See *infra* notes 134-61 and accompanying text.

5. See *infra* notes 162-84 and accompanying text.

6. See *infra* notes 185-207 and accompanying text.

7. See *infra* notes 208-50 and accompanying text.

8. See *infra* notes 212-39 and accompanying text.

9. See *infra* notes 240-42 and accompanying text.

10. See *infra* notes 243-50 and accompanying text.

11. *Bilyk v. Chicago Transit Authority*, 125 Ill. 2d 230, 531 N.E.2d 1 (1988); *Chicago Tribune v. Village of Downers Grove*, 125 Ill. 2d 468, 532 N.E.2d 821 (1988).

12. U.S. CONST. amend. XIV. The fourteenth amendment states in relevant part: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Id.*

13. ILL. REV. STAT. ch. 111 2/3, para. 327 (1987).

14. *Id.*

15. 125 Ill. 2d 230, 531 N.E.2d 1 (1988).

injuries inflicted by another passenger while riding a CTA bus; the plaintiff alleged that the CTA engaged in negligence as well as willful and wanton misconduct, in failing to protect its passengers from attacks by third parties.¹⁶ The CTA moved to dismiss the complaint claiming that section 27 of the MTA Act¹⁷ bars the action because it absolves the CTA of liability for criminal acts of third persons.¹⁸ In response, the plaintiff contended that the MTA Act violated the equal protection clause of the Illinois¹⁹ and United States constitutions,²⁰ by unfairly distinguishing between public carriers and private carriers with respect to tort liability for acts of third parties. In addition, the plaintiff argued that the MTA Act violated the proscription against special legislation in the Illinois Constitution,²¹ and the Illinois Constitution's guarantee of a remedy for all injuries and wrongs.²² Agreeing with the plaintiff's arguments, the trial court held the MTA Act unconstitutional.²³ The CTA appealed directly to the supreme court.²⁴

The Illinois Supreme Court reversed the trial court and upheld the MTA Act as constitutional.²⁵ The court stated that although section 27 of the MTA Act classifies public carriers differently from private carriers regarding tort immunity, "a legislative classification will be upheld if any set of facts can be reasonably conceived which justify distinguishing the class to which the law applies from the class to which the statute is inapplicable."²⁶ The

16. *Id.* at 234, 531 N.E.2d at 2. The rider asked the bus driver for assistance when another passenger became violent, but the driver refused to help and the rider was subsequently injured by the violent passenger. *Id.*

17. ILL. REV. STAT. ch. 111 2/3, para. 327 (1987).

18. 125 Ill. 2d at 234, 531 N.E.2d at 2 (1988).

19. ILL. CONST. of 1970 art. I, § 2. This section states that "[n]o person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws." *Id.*

20. U.S. CONST. amend. XIV, § 1. Section 1 states in relevant part, "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Id.*

21. ILL. CONST. of 1970 art. IV, § 13. This provision states that "the General Assembly shall pass no special or local law when a general law is or can be made applicable." *Id.* It also indicates that "whether a general law is or can be made applicable shall be a matter of judicial determination." *Id.*

22. ILL. CONST. of 1970 art. I, § 12. "Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly." *Id.*

23. *Bilyk*, 125 Ill. 2d at 234, 531 N.E.2d at 2.

24. *Id.* Direct appeal to the supreme court was taken under Rule 302(a), which permits such appeals when a statute has been declared unconstitutional. ILL. REV. STAT. ch. 110A, para. 302(a) (1987).

25. *Bilyk*, 125 Ill. 2d at 248, 531 N.E.2d at 7-8.

26. *Id.* at 236, 531 N.E.2d at 3. The court used a rational relationship standard in

court determined that taxpayers' involvement in funding public transportation provided a rational basis for differentiating between the liability of public and private carriers for failing to prevent criminal assaults on passengers.²⁷

The plaintiff further claimed that the legislature could not give the CTA absolute immunity under section 27 of the MTA Act while holding other municipal entities, such as police departments, liable in some instances for failing to protect patrons from third party acts.²⁸ The court, however, held that the immunity conferred on the CTA is rationally related to its special function and purpose.²⁹ The court reasoned that the transit authority's purpose is to provide transportation, rather than to guarantee passenger safety.³⁰ In light of this special purpose, the court held that section 27 may differentiate between the CTA's tort liability and that of other municipal entities.³¹ The court therefore concluded that the more extensive immunity given to the CTA does not violate the equal protection clause or the proscription against special legislation.³²

The Illinois Supreme Court first abolished the broad application of the doctrine of sovereign immunity in *Molitor v. Kaneland Com-*

reviewing both the plaintiff's equal protection challenge and the challenge based on the proscription against special legislation. *Id.* Under this rational relationship standard, a statute will only be invalidated if "it was enacted for reasons totally unrelated to the pursuit of a legitimate state goal." *Id.* at 235-36, 531 N.E.2d at 3.

27. *Id.* at 238, 531 N.E.2d at 4.

28. *Id.* at 240-41, 531 N.E.2d at 15.

29. *Id.* at 243, 531 N.E.2d at 6. The court stated that "[t]he legislature excluded the CTA and other public entities operating as common carriers from the provisions of the Tort Immunity Act, because of the 'special relationship' between carriers and their passengers subjected carriers to a higher standard of care than applied to other municipalities." *Id.* (quoting ILL. REV. STAT. ch. 85, para. 2-101 (1985)). The court also stated that uniform liability between the CTA and other municipal bodies such as police departments, whose primary purpose is to provide protection, is not required. *Id.* at 243, 531 N.E.2d at 6.

30. *Id.*

31. *Id.* The court also noted that denying immunity here would potentially expose the CTA to very high liability due to the many riders it serves. *Id.* at 244, 531 N.E.2d at 7.

32. *Id.* The *Bilyk* plaintiff also claimed that section 27 violated the guarantee of a remedy to all persons for all injuries and wrongs. *Id.* The court stated that this "certain remedy" provision has been interpreted as an expression of political philosophy such as a statement of purpose or a goal, rather than a specific mandate. *Id.* at 245, 531 N.E.2d at 7 (citing *Sullivan v. Midlothian Park Dist.*, 51 Ill. 2d 274, 281 N.E.2d 659 (1972)). Moreover, the court reasoned that the MTA Act did not abolish the plaintiff's claim but simply restricted one category of defendants' liability. *Id.* at 247, 531 N.E.2d at 8. Therefore, the MTA Act did not deprive the plaintiff of a remedy for her injuries and accordingly did not violate the Illinois constitution's guaranty of a remedy. *Id.*

munity Unit District No. 302.³³ In response, the Illinois General Assembly passed the Tort Immunity Act³⁴ to restore governmental immunity in limited situations. The *Bilyk* court's approval of this latest legislative nibbling away of the *Molitor* doctrine portends future broadening of governmental immunity. For example, home rule municipalities, which have the same authority as the sovereign does in matters pertaining to their governmental affairs, may pass immunity ordinances similar to that of the MTA Act to shield their activities. Thus, a home rule municipality could perhaps enjoy absolute immunity for its actions or inactions.

B. Challenges to Solicitation Regulations

A second case in which a local ordinance was challenged on constitutional grounds is *Chicago Tribune v. Village of Downers Grove*.³⁵ In this case, the Village passed an ordinance which regulated both commercial and noncommercial door-to-door solicitation.³⁶ The newspaper filed an action to have the ordinance declared unconstitutional on both equal protection and first amendment grounds after Tribune solicitors were stopped by the Village police and advised that they must obtain permits for commercial solicitation.³⁷ In affirming the trial and appellate courts,³⁸ the Illinois Supreme Court considered the newspaper's solicitation to be an exercise of free speech and invalidated the ordinance on

33. 18 Ill. 2d 11, 163 N.E.2d 89 (1959), *cert. denied*, 362 U.S. 968 (1960), *superceded by statute as stated in* Woodfield Lanes, Inc. v. Village of Schaumburg, 168 Ill. App. 3d 763, 523 N.E.2d 36 (1st Dist. 1988).

34. ILL. REV. STAT. ch. 111 2/3, para. 327 (1987).

35. 125 Ill. 2d 468, 532 N.E.2d 821 (1988).

36. *Id.* at 470, 532 N.E.2d at 821. The Village considered solicitation for charitable, religious and political organizations noncommercial but solicitation for the sale of goods, books, magazines, or any other article commercial. *Id.* Licenses for commercial solicitation required a fee and a five-day waiting period. *Id.* The Village also limited the number of commercial licenses issued. *Id.* Noncommercial solicitation required merely registration and a statement of the nature and purpose of the solicitation. *Id.*

37. *Id.* at 471, 532 N.E.2d at 822. In response to the newspaper's challenge, the Village claimed that commercial speech, which included the newspaper, is afforded less protection than pure speech, and that solicitation of commercial material is nothing more than a commercial transaction, which can be regulated. *Id.* at 472, 532 N.E.2d at 822-23. See *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.* 424 U.S. 748 (1976), and *Breard v. City of Alexandria*, 341 U.S. 622 (1951) (in both cases the court afforded a lesser standard of protection to commercial speech than it would have to noncommercial speech).

38. The trial court held that the Tribune's solicitation was speech protected by the Illinois and United States Constitutions and that the solicitation was co-equal with the rights of "non-commercial" organizations; therefore, the Village violated the Tribune's free speech and equal protection rights. *Id.* at 471, 532 N.E.2d at 822. Using an equal protection analysis, the appellate court affirmed the circuit court. *Id.*

both equal protection and first amendment grounds.³⁹

Addressing the first amendment issue, the court stated that although the village ordinance had a legitimate purpose, i.e., to protect residents from harassment from door-to-door solicitation, the ordinance failed to comport with the time, place, and manner test articulated by the United States Supreme Court.⁴⁰ This test allows restrictions only upon the time, place, and manner of expression, not on the freedom of expression itself.⁴¹ The court ruled that the ordinance was neither reasonably related to the objective of protecting residents from harassing solicitation, nor as narrowly tailored as it could be.⁴² The court considered the waiting period and the limit of licenses for commercial solicitation an unreasonable prior restraint on the newspaper's ability to circulate its publication.⁴³ The court noted that less vigorous methods were available to protect citizens from harassing solicitation.⁴⁴ Because the ordinance regulated beyond merely the time, place and manner of the expression, the court held that it violated the first amendment.⁴⁵

The court also held that the ordinance violated the equal protection clause of the United States Constitution.⁴⁶ The court stated that an ordinance affecting first amendment rights must be narrowly tailored to serve an important governmental objective.⁴⁷ Applying a strict scrutiny analysis,⁴⁸ the court held that the distinction drawn by the ordinance between newspaper salesmen

39. *Id.* at 471, 532 N.E.2d at 822. The Illinois Supreme Court decided this case only on federal constitutional principles. *Id.* at 472, 532 N.E.2d at 822.

40. *Id.* at 475, 532 N.E.2d at 824. The Supreme Court has interpreted the first amendment as allowing restrictions on the time, place and manner of speech, stating that "if regulations protect a substantial government interest unrelated to the suppression of free expression and are narrowly tailored, limiting the restrictions to those reasonably necessary to protect the substantial government interest," then they are permissible. *Id.* at 474, 532 N.E.2d at 823 (citing *Brown v. Glines*, 444 U.S. 348 (1980) and *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620 (1980)).

41. *Id.* at 475, 532 N.E.2d at 823.

42. *Id.* at 475, 532 N.E.2d at 824.

43. *Id.*

44. *Id.* Specifically, the court stated that the Village could more vigorously enforce regulations against fraud and trespassing as an alternative to the ordinance. *Id.*

45. *Id.* The Village tried to justify its regulation of "commercial" solicitation on the ground that commercial entities earned a profit, thus making such solicitation less worthy of constitutional protection. *Id.* at 476, 532 N.E.2d at 824. The court stated that an entity earns a profit does not justify a lesser degree of constitutional protection. *Id.*

46. *Id.* at 477, 532 N.E.2d at 824.

47. *Id.* at 474, 532 N.E.2d at 824.

48. Under strict scrutiny analysis, "the government . . . must establish that it has a compelling interest which justifies the law in question . . ." *Id.* at 476, 532 N.E.2d at 824.

and charitable solicitors did not further the ordinance's objective.⁴⁹ Consequently, the court found the distinction arbitrary and in violation of the equal protection clause.⁵⁰

While not forging new principles, *Tribune* is indicative of the continuing struggle between municipalities attempting to regulate door-to-door solicitation and the regulated parties who challenge them. The Illinois Supreme Court and the federal courts umpire this conflict with uneven results.

III. EMPLOYMENT ISSUES INVOLVING PUBLIC ENTITIES

During the *Survey* year, the Illinois Supreme Court addressed three employment disputes that involved public entities. The issue in the first dispute was whether a circuit court had authority to entertain a litigant's motion that was independent from the administrative proceedings surrounding the same event.⁵¹ The second case involved a city's anti-union activities.⁵² The third dispute was whether counties could be considered joint employers of the court's non-judicial employees, thus rendering the county a party to collective bargaining agreements.⁵³

A. Circuit Court Review of Administrative Actions

In *Dubin v. Personnel Board*,⁵⁴ the City of Chicago's Personnel Board brought charges against Dubin, a city employee, claiming he violated the City's residency requirement, which mandates that city employees reside within the city limits.⁵⁵ The Personnel Board held a hearing based on this allegation and found that Dubin did live outside the city. As a result, Dubin was discharged from his job.⁵⁶ Dubin subsequently filed a petition to stay the order in an

49. *Id.* at 475, 532 N.E.2d at 823.

50. *Id.* at 477, 532 N.E.2d at 824.

51. *Dubin v. Personnel Bd.*, 128 Ill. 2d 490, 539 N.E.2d 1243 (1989). For a discussion of *Dubin*, see *infra* notes 54-77 and accompanying text. See also Sullivan and Marcouiller, *Administrative Law*, 21 LOY. U. CHI. L.J. 215, 233 (1990).

52. *City of Burbank v. ISLRB*, 128 Ill. 2d 335, 538 N.E.2d 1146 (1989). For a discussion of *Burbank*, see *infra* notes 78-100 and accompanying text.

53. *Orenic v. ISLRB*, 127 Ill. 2d 453, 537 N.E.2d 784 (1989). For a discussion of *Orenic*, see *infra* notes 101-16 and accompanying text.

54. 128 Ill. 2d 490, 539 N.E.2d 1243 (1989).

55. *Id.* at 492-93, 539 N.E.2d at 1244. The residency requirement is set forth in the CHICAGO, ILL., MUNICIPAL CODE § 25-30 (1984).

56. 128 Ill. 2d at 493, 539 N.E.2d at 1244. The Personnel Board found that Dubin did not intend to reside, and did not in fact reside, within the corporate boundaries of the City of Chicago. *Id.*

effort to prevent his discharge.⁵⁷ He claimed that the Board's findings of fact were insufficient to warrant discharge and that because of their inadequacy, the findings were incapable of review.⁵⁸

The trial judge stayed the discharge and concluded that the Personnel Board's findings were insufficient to allow meaningful judicial review.⁵⁹ The Personnel Board appealed the circuit court's order, but the appellate court dismissed the appeal for lack of appellate jurisdiction, finding that the stay order was not a final and appealable order.⁶⁰ The Personnel Board appealed to the Illinois Supreme Court, asking it to resolve the conflict among the appellate districts regarding the appealability of orders staying final decisions of administrative agencies.⁶¹

On appeal, the Personnel Board contended that the circuit court lacked jurisdiction to issue a stay order because, according to Illinois Code of Civil Procedure, the plaintiff must draft a complaint to appeal a final agency decision to the circuit court.⁶² The Personnel Board claimed that because Dubin did not label his grievance a complaint⁶³ the claim was ineligible for judicial review. Furthermore, the Personnel Board argued that Dubin's "petition" failed to state a cause of action for judicial review and could not be read as a complaint.⁶⁴ Therefore, the Personnel Board contended that the court lacked jurisdiction over Dubin's claim.⁶⁵

Addressing the Personnel Board's argument, the Illinois Supreme Court stated that, contrary to the Personnel Board's as-

57. *Id.* Alternatively, he asked for a temporary restraining order against enforcement of the Personnel Board's discharge order. *Id.*

58. *Id.*

59. *Id.* at 494, 539 N.E.2d at 1244.

60. *Id.*

61. *Id.* at 495, 539 N.E.2d at 1245. Such orders were appealable in the first and fifth districts. See Coordinating Comm. of Mechanical Specialty Contractors Ass'n v. O'Connor, 92 Ill. App. 3d 318, 416 N.E.2d 42 (1st Dist. 1980); Cahokia Sportservice, Inc. v. Illinois Liquor Control Comm'n, 32 Ill. App. 3d 801, 336 N.E.2d 276 (5th Dist. 1975). Stay orders were not appealable in the second district. See Gorr v. Board of Fire and Police Comm'rs, 129 Ill. App. 3d 327, 472 N.E.2d 587 (2d Dist. 1984).

62. *Dubin*, 128 Ill. 2d at 495, 539 N.E.2d at 1245. The Personnel Board contended that the Code of Civil Procedure governed judicial review of its decisions. *Id.* It specifically relied on sections 2-602 and 2-603, which provide that the initial pleading in a civil suit shall be designated a complaint and shall state the pleader's cause of action. *Id.* See ILL. REV. STAT. ch. 110, para. 2-602 (1987) ("the first pleading by the plaintiff shall be designated a complaint"); and ILL. REV. STAT. ch. 110, para. 2-603 (1987) ("all pleadings shall contain a plain and concise statement of the pleader's cause of action").

63. *Dubin*, 128 Ill.2d at 495, 539 N.E.2d at 1245. Dubin called the grievance a "petition" instead of a "complaint." *Id.*

64. *Id.* at 496, 539 N.E.2d at 1245.

65. *Id.*

sumption, Dubin sought only an order staying the administrative decision and remanding it for more findings of fact.⁶⁶ Because Dubin did not request substantive review of the decision, his "petition" did not seek judicial review; rather, the petition sought merely a remand of the agency decision for more fact finding.⁶⁷

Although the court ruled that Dubin stated a cause of action for judicial review, it determined that the circuit court lacked jurisdiction to review the agency's decision.⁶⁸ The court stated that when an administrative agency renders a final decision, the courts may review it through either statutory or common law procedures.⁶⁹ Statutory procedures are defined by the Administrative Review Act ("ARA")⁷⁰ and apply to all agencies whose organic statute have expressly adopted the ARA.⁷¹ The Personnel Board, however, was not subject to the ARA. Dubin, therefore, had to seek review of the board's decision through a common law writ of *certiorari*.⁷²

The court noted, however, that the common law means of judicial review parallel the means provided in the ARA.⁷³ Under both, the circuit court cannot review an agency's decision unless it has been asked specifically to do so.⁷⁴ The court reasoned that the circuit court's power to review an administrative agency's decision must be exercised within the proceedings for judicial review, not in a separate proceeding which requests only a remand for factual

66. *Id.*

67. *Id.* The court rejected the Personnel Board's contention that because Dubin's complaint was legally insufficient, the circuit court lacked jurisdiction to hear the case. *Id.* at 496, 539 N.E.2d at 1245-46. The supreme court stated that subject matter jurisdiction does not depend on the legal sufficiency of a complaint. *Id.* at 496-97, 539 N.E.2d at 1246 (citing *People ex. rel. Scott v. Janson*, 57 Ill. 2d 451, 312 N.E.2d 620 (1974), *California v. Western Tire Auto Stores, Inc.*, 32 Ill. 2d 527, 207 N.E.2d 474 (1965), *Walton v. Albers*, 380 Ill. 423, 44 N.E.2d 145 (1942)).

68. *Id.* at 497, 539 N.E.2d at 1246.

69. *Id.* (citing *Nowicki v. Evanston Fair Hous. Review Bd.*, 62 Ill. 2d 11, 338 N.E.2d 186 (1975) (review of a decision may be obtained through a common law writ of *certiorari*)).

70. ILL. REV. STAT. ch. 110, para. 3-101 to 3-112 (1985).

71. *Dubin*, 128 Ill. 2d at 497, 539 N.E.2d at 1246 (citing *People ex. rel. Scott v. Johnson*, 57 Ill. 2d 451, 312 N.E.2d 620 (1974)). When the ARA does apply, once the circuit court has been requested to review the agency's final decision, the court may stay the decision for good cause pending the final disposition of the case by the circuit court. *Id.* The court may also make any order that it deems proper for the amendment, completion, or filing of the record of proceedings of the administrative agency. *Id.* at 498, 539 N.E.2d at 1246-47 (citing ILL. REV. STAT. ch. 110, para. 3-111(a)(1)-(2) (1987)).

72. *Id.* at 498, 539 N.E.2d at 1246.

73. *Id.* (citing *Smith v. Department of Public Aid*, 67 Ill. 2d 529, 367 N.E.2d 1286 (1977)).

74. *Id.* at 498-99, 539 N.E.2d at 1247.

findings.⁷⁵ Thus, because Dubin did not request judicial review, the circuit court lacked jurisdiction to stay the Personnel Board's order.⁷⁶

Only the legislature can make administrative decisions reviewable under the ARA.⁷⁷ Thus, a practitioner seeking a review of an administrative decision not specifically reviewable under the ARA must rely upon the common law writ of *certiorari*. Yet, procedures under the writ were not always clear under the decided cases. Even the *Dubin* court leaves unanswered, on a practical level, what Dubin's lawyer should have done to permit Dubin to keep working while he exercised his procedural due process rights. A practical suggestion is to permit *all* administrative decisions by units of local government to be reconcilable under the ARA.

B. *Unfair Labor Practices*

The second employment issue involving a public entity arose in *City of Burbank v. Illinois State Labor Relations Board*.⁷⁸ In *Burbank*, a city employee, Robert Randle, advocated that the City recognize the American Federation of State, County and Municipal Employees ("AFSCME") as the employees' exclusive bargaining representative.⁷⁹ The City Council and various City administrators opposed unionization and thwarted Randle's organizational campaign.⁸⁰ In response to AFSCME's petition seeking a representative election, and over the City's objection, the Illinois State Labor Relations Board ("Board") ordered a representation election to be held to determine whether the City employees wanted representation by an exclusive bargaining agent.⁸¹ AFSCME was subse-

75. *Id.* at 499, 539 N.E.2d at 1247.

76. *Id.*

77. ILL. REV. STAT. ch. 110, para. 3-101 to 3-112 (1985).

78. 128 Ill. 2d 335, 538 N.E.2d 1146 (1989). For additional discussion, see Hartog-Rapp and Kaplan, *Labor Law*, 21 LOY. U. CHI. L.J. 507, 519 (1990).

79. *Id.* at 340, 538 N.E.2d at 1147.

80. *Id.* During the course of Randle's union activities the Director of Public Works admonished Randle that he was not permitted to discuss union business on company time. *Id.* The Director also began to diminish Randle's responsibilities. *Id.* at 340-41, 538 N.E.2d at 1147.

81. *Id.* at 341, 538 N.E.2d at 1147. The City voiced several objections to the representative election. *Id.* It challenged Randle's eligibility to vote, claiming that he was a supervisor under the Illinois Public Labor Relations Act. *Id.* The City also contested the inclusion of the foremen in the bargaining unit and requested a reversal of the Board's earlier decision that foremen were statutory employees. *Id.* See ILL. REV. STAT. ch. 48, paras. 1603(r), (s)(1) (section (r) defines "supervisor" and section (s)(1) bars them from bargaining units).

quently certified as the representative at a City Council meeting.⁸²

Prior to AFSCME's certification, the City enacted an ordinance that restructured the public works department in which Randle worked.⁸³ This restructuring plan affected only Randle and resulted in his termination. No cause for Randle's dismissal was given.⁸⁴

Shortly thereafter, AFSCME filed an unfair labor practice claim based on Randle's discharge, challenging that the restructuring ordinance was enacted solely to terminate Randle.⁸⁵ The City denied the allegation and stated that the sole motivation behind the ordinance was to address certain financial exigencies present in the public works department.⁸⁶ The Board's hearing officer, however, found the evidence regarding the existence of financial concerns insubstantial and rejected the City's claim.⁸⁷ The hearing officer then ordered that Randle's reinstatement in his former or a comparable position,⁸⁸ and the Board affirmed the hearing officer's findings.⁸⁹ The City appealed from the Board's finding and claimed that the Board's decision was against the manifest weight of the evidence.⁹⁰ The appellate court affirmed the Board's decision,⁹¹ and the City appealed to the Illinois Supreme Court.⁹²

In affirming the appellate court, the supreme court held that [w]here an employer is charged with unfair labor practice because of the discharge of an employee engaged in a protected ac-

82. *Burbank*, 128 Ill. 2d at 341, 538 N.E.2d at 1148.

83. *Id.* Although the restructuring plan was purportedly enacted in an effort to cut costs in the public works department, testimony regarding the restructuring plan's economic benefits was conflicting and inconclusive. *Id.* at 342, 538 N.E.2d at 1148.

84. *Id.*

85. *Id.*

86. *Id.* at 342-43, 538 N.E.2d at 1148.

87. *Id.* at 344, 538 N.E.2d at 1148.

88. *Id.*

89. *Id.* The Board noted that the reorganization did not change the Department's structure except to dismiss a "known union adherent." *Id.* at 343, 538 N.E.2d at 1149. It claimed that although the City "can reorganize . . . for any legitimate reason, [it cannot] do so when its purpose is to evade [fair labor practices required by the Illinois Public Labor Relations] Act." *Id.*

90. *Id.* at 340, 538 N.E.2d at 1147.

91. *City of Burbank v. ISLRB*, 168 Ill. App. 3d 885, 523 N.E.2d 68 (1st Dist. 1988). In affirming the Board's decision, the appellate court listed three factors that the Board could consider in determining whether anti-union animus motivated the discharge: 1) the City's knowledge of the employee's union activities; 2) timing of the discharge as it related to union activities; and 3) the employer's pattern of conduct. *Id.* at 895, 523 N.E.2d at 75 (1988). With respect to each factor, the appellate court found that ample evidence existed "to support the Board's finding that the City's attempted reorganization was pretextual and that Randle's discharge was motivated by anti-union animus." *Id.*

92. *Burbank*, 128 Ill. 2d at 340, 538 N.E.2d at 1147.

tivity, the [complainant] must first show by a preponderance of the evidence that the [employer's action] was based in whole or in part on anti-union animus or . . . that the employee's protected conduct was a substantial or motivating factor in the adverse action.⁹³

The court also stated that "once the charging party has established a *prima facie* case of discharge based on anti-union [sentiment], the employer can defend his actions by [showing] that the discharged employee would have been fired for a legitimate business reason [in spite of] the employer's anti-union [sentiment]."⁹⁴ The reasons for discharge offered by the employer, however, must be *bona fide* and not pretextual.⁹⁵ If the reasons are pretextual, the inquiry ends in the employee's favor.⁹⁶ If the reasons are *bona fide*, a "dual motive" for the discharge exists and the burden of proof shifts to the employer, who must prove "by a preponderance of evidence that the employee would have been terminated notwithstanding his union involvement."⁹⁷

Considering the facts of this case, the court ruled that the City's restructuring plan was a pretext for terminating Randle.⁹⁸ The proximity in time between the reorganization decision and Randle's activities in certifying AFSCME, the targeting of Randle for

93. *Id.* at 345, 538 N.E.2d at 1149-50 (quoting *NLRB v. Transp. Management Corp.*, 462 U.S. 393 (1983)). The court then identified several factors that could be used to indicate anti-union motivations. *Id.* These factors include an employer's expressed hostility towards unionization with knowledge of the employee's union activities, proximity in time between the employee's union activities and their discharge, disparate treatment of employees or a pattern of conduct which targets union supporters for adverse treatment, inconsistencies between the proffered reason for discharge and other actions of the employer, and contradictory explanations for the discharge. *Id.* at 346, 538 N.E.2d at 1150 (listing cases).

94. *Id.* (citing *NLRB v. Transp. Management Corp.*, 462 U.S. 393 (1983)).

95. *Id.*

96. *Id.* (citing *Marathon LeTourneau Co. v. NLRB*, 699 F.2d 248 (5th Cir. 1983)).

97. *Id.* at 346-47, 538 N.E.2d at 1150. The supreme court concluded that the appellate court used the proper standard of review but added that two aspects of its decision could lead to future confusion. *Id.* at 347, 538 N.E.2d at 1150. The court noted that the appellate court seemingly accepted the City's reason for Randle's dismissal, without determining whether it was *bona fide* and then proceeded to a "dual motive" analysis. *Id.* at 347, 538 N.E.2d at 1150-51. The supreme court clarified this process by stating that only *after* the reason advanced by the employer has been found to be *bona fide* does the "dual motive" analysis come into play. *Id.* The supreme court was also troubled by the appellate court's analysis that either the City's knowledge of Randle's union activities or the City's anti-union pattern of conduct would have been enough to support the Board's finding that the City's reorganization was pretextual. *Id.* at 347, 538 N.E.2d at 1151. The supreme court was not aware of any case "where an employer's knowledge of an employee's union activities, without more, has been held to establish that a discharge was motivated by antiunion animus." *Id.*

98. *Id.*

discharge, and the inconsistency between the City's proffered reason for reorganization and the testimony of the City's managers all supported the Board's finding that the "reorganization was pretextual and Randle's discharge was motivated by antiunion animus."⁹⁹ The court therefore concluded that the lower court's decision was not against the manifest weight of the evidence.¹⁰⁰

C. Counties as Joint Employers of Court Employees

In the third Illinois Supreme Court case during the Survey year to involve government employers, *Orenic v. Illinois State Labor Relations Board*,¹⁰¹ four judges brought an action for a writ of prohibition or a writ of *mandamus* against the Illinois State Labor Relations Board to forbid the Board from considering counties as joint employers of court employees.¹⁰²

The judges had several arguments in support of their position that the State was the sole employer of the judicial branch employees. First, they contended that the counties could not be the employers of the judicial branch employees because of the counties' funding role in relation to the court system. Next, the judges argued that because the counties played merely a ministerial role, they lacked the authority to participate in collective bargaining between chief judges and labor organizations.¹⁰³

99. *Id.* at 349, 538 N.E.2d at 1151-52 (quoting *City of Burbank v. ISLRB*, 168 Ill. App. 3d 885, 895, 523 N.E.2d at 68, 75 (1st Dist. 1988)).

100. *Id.* at 349, 538 N.E.2d at 1152.

101. 127 Ill. 2d 453, 537 N.E.2d. 784 (1989), also discussed in Hartog-Rapp and Kaplan, *supra* note 78, at 521.

102. *Id.* at 456-58, 537 N.E.2d at 786-87. This case arose out of four cases that were pending before the Board. *Id.* The first case involved the chief judge of the twelfth circuit, Michael Orenic, the County of Will, and District 55, International Association of Machinists and Aerospace Workers AFL-CIO. *Id.* The Board's hearing officer found that the county and the chief judge are the assistant public defender's employers. *Id.* The second action involved the chief judge of the fifth circuit, Ralph S. Pearman, the County of Vermillion, and the International Brotherhood of Electrical Workers (IBEW). *Id.* Here, IBEW petitioned the Board for an election so that it might represent all regular full-time and part-time bailiffs which were said to be employed jointly by the county and the chief judge. *Id.* The third action involved Chief Judge Rapp of the 15th circuit, the County of Stephenson, and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America. *Id.* The case followed a decision by the Board that the county and the chief judge were joint employers of those employees. *Id.* The fourth case involved Chief Judge McCarthy of the 16th Circuit, the County of DeKalb and the American Federation of State, County and Municipal Employees. *Id.* The Board found that the county is a joint employer with the chief judge in regard to the unrepresented, non-professional employees. *Id.* At the time the consolidation of these four actions occurred, the representative elections had been held and the unions had lost making this controversy moot in regard to the four petitioning judges. *Id.*

103. *Id.* at 459, 537 N.E.2d at 787. The court stated that because the relief the judges

The chief issue before the court was whether, because of their statutory role in funding the circuit courts, counties may be considered joint employers of non-judicial employees for purposes of collective bargaining under the Illinois Public Labor Relations Act.¹⁰⁴ The Illinois Labor Relations Board found that the county and the circuit court's chief judge were joint employers of that court's non-judicial employees.¹⁰⁵

Rejecting the Board's findings, the Illinois Supreme Court stated that the test for considering two parties as joint employers is whether they exert significant control over the same employees and whether they share in matters governing essential terms of employment.¹⁰⁶ The court acknowledged that traditional principles of labor law may warrant finding the court a joint employer; however, the court held that Illinois constitutional principles prohibited such a finding.¹⁰⁷

The Illinois Supreme Court further reasoned that neither the constitutional clause authorizing county-provided supplements to judicial salaries,¹⁰⁸ nor the authorization for county funding of these workers, necessarily implies ultimate county control over conditions of court personnel.¹⁰⁹ The court added that aside from setting and paying the salaries and providing facilities that were

requested was prohibitory in nature, a writ of prohibition rather than a writ of *mandamus* was the appropriate channel for relief. *Id.* at 468-69, 537 N.E.2d at 792. The court granted *certiorari* because administrative review would pose a delay that would threaten the court system's operation and possibly cause irreparable harm to the court's relationship with its employees. *Id.* at 469-70, 537 N.E.2d at 792.

104. *Id.* at 455-56, 537 N.E.2d at 786. See The Illinois Public Labor Relations Act, ILL. REV. STAT. ch. 48, paras. 1604, 1606, 1607 (1983).

105. *Orenic*, 127 Ill. 2d at 456-57, 537 N.E.2d at 786-87. In reaching its decision to consider the judges joint employers with the county, the Board presumed the statute allowing county funding of the court system constitutional and stated that it has traditionally held an employer to be each entity "whose presence is necessary to create an effective bargaining relationship." *Id.* at 462, 537 N.E.2d at 788 (quoting County of Tazewell, 1 Pub. Employee Rep. (Ill.) para. 2022, No. S-RC-2 (ISLRB Sept. 27, 1985)). Based on that standard, the Board concluded that counties and judges were joint employers of the court personnel at issue. *Id.*

106. *Id.* at 474, 537 N.E.2d at 794 (citing *NLRB v. Browning-Ferris Ind.*, 691 F.2d 1117 (3d Cir. 1982)). The court added that the relevant factors in determining whether a party is a joint employer is that party's role in hiring and firing, promotions and demotions, setting wages or work hours, and setting other employment conditions. *Id.* at 475, 537 N.E.2d at 794-95 (citing *Jansonius, Use and Misuse of Employee Leasing*, LAB. L.J. 35, 36 (Jan. 1, 1985)).

107. *Id.* at 476-77, 537 N.E.2d at 795. In particular, the court stated that the principle of separation of powers prohibits any imposition of joint employer status on the courts. *Id.*

108. ILL. CONST. of 1970 art. VI, § 14.

109. *Orenic*, 127 Ill. 2d at 477, 537 N.E.2d at 796. The court added that although counties have the power to set and pay salaries of the circuit court's non-judicial employ-

ultimately under court control, the counties played no other role that could render them a joint employer under the proper standard.¹¹⁰

In further support of its conclusion that the State, and not the county, is the primary employer of non-judicial employees in the judicial branch, the court relied on the separation of powers doctrine in the Illinois Constitution.¹¹¹ The court explained that the Illinois Constitution creates a unified court system that operates statewide and which does not delegate control over the judicial system's non-judicial court employees to a local entity such as a county.¹¹² The court reasoned that allowing counties to share collective bargaining authority with chief judges would effectively strip the chief judges of their administrative powers.¹¹³ This "evisceration of the courts as free and independent employers of their own employees" would result because the counties could use their funding authority to impede the judges' ability to bargain.¹¹⁴ Accordingly, the court prohibited the Board from certifying any bargaining unit in which a county was listed as a joint employer and prohibited any unfair labor practice finding based on a chief judge's refusal to bargain with a county as a joint employer of non-judicial court employees.¹¹⁵

Although the judiciary has, to date, been successful in insulating itself from regulations that control municipalities and other governmental agencies, it may be swimming against the tide of increasing unionism of all public employees. Indeed, in *County of Kane v. Carlson*,¹¹⁶ the Illinois Supreme Court held that application of the Act to the judicial branch is not per se unconstitutional because

ees, this power is secondary to the court's responsibility to administer justice and to protect themselves and the public they serve. *Id.* at 479, 537 N.E.2d at 797.

110. *Id.* at 479-80, 537 N.E.2d at 797. The court felt that the State was more rightfully the employer of non-judicial court employees because it has greater control over them. *Id.*

111. *Id.* The Illinois Constitution states that the legislative, executive and judicial branches are separate and that no branch shall exercise powers properly belonging to another. ILL. CONST. of 1970 art. II, § 1.

112. *Orenic*, 127 Ill. 2d at 480, 537 N.E.2d at 797 (citing *Ampersand, Inc. v. Finley*, 61 Ill. 2d 537, 338 N.E.2d 12 (1975)).

113. *Id.*

114. *Id.* at 480, 537 N.E.2d at 797. The court stated that it would not be practicable to divide employer authority so that the counties would bargain salaries and the courts might separately bargain other terms of employment. *Id.* at 481, 537 N.E.2d at 797-98. More specifically, the court stated that "if a county were intransigent on a salary issue, it might prevent agreement between employees and a chief judge as to other working conditions." *Id.*

115. *Id.* at 485, 537 N.E.2d at 800.

116. 116 Ill. 2d 186, 507 N.E.2d 482 (1987).

separation of powers does not demand complete separation among the various governmental branches. In most situations, the Act could protect judicial employees the same way it protects any other public employee.¹¹⁷

IV. TORT IMMUNITY

In Illinois, state and local governmental immunity from tort liability is set forth in the Local Governmental and Governmental Employees Tort Immunity Act (the "Tort Immunity Act").¹¹⁸ During the *Survey* year, the Illinois Supreme Court held that although the Tort Immunity Act did not apply to a City comptroller charged with misappropriation of funds, the common law public official immunity doctrine shielded the comptroller from liability.

In *Kinzer v. City of Chicago*,¹¹⁹ the plaintiff brought an action seeking declaratory relief, injunctive relief and damages against the City of Chicago and Daniel Grim ("Grim"), the City Comptroller. The plaintiff alleged that Grim and other City officials misappropriated funds in connection with ChicagoFest and other seasonal festivals sponsored by the City between 1978 and 1983.¹²⁰ In particular, the plaintiff alleged that Grim's use of funds for these festivals violated section 8-1-7 of the Municipal Code¹²¹ because the City Council never appropriated money to cover these expenditures.¹²² The plaintiff also alleged breach of fiduciary duty and conspiracy against Grim and sought reimbursement to the City for the allegedly illegal expenditures made during Grim's tenure.¹²³

117. The Act sets up safeguards that give employers the right to refuse to bargain about matters of "inherent managerial policy." ILL. REV. STAT. ch. 48, paras. 1604, 1607 (1983).

118. ILL. REV. STAT. ch. 85, paras. 1-101 to 10-101 (1987). The Tort Immunity Act's purpose is to shield local public entities and public employees from liability arising from the operation of government. *Id.* para. 1-101.1(a).

119. 128 Ill. 2d 437, 539 N.E.2d 1216 (1989).

120. *Id.* at 442, 539 N.E.2d at 1218.

121. ILL. REV. STAT. ch. 24, para. 8-1-7 (1987). This section states that no expenditures may be made unless an appropriation concerning that expense or contract has been previously approved by the City Council. *Id.*

122. *Kinzer*, 128 Ill. 2d at 442, 539 N.E.2d at 1218.

123. *Id.* at 442, 539 N.E.2d at 1218. In 1978, the City of Chicago used the Municipal Hotel Operators Fund ("Fund 355") to fund ChicagoFest. *Id.* at 440, 539 N.E.2d at 1217. The City Council annually approved the money's use in Fund 355 for the promotion of tourism and special events pursuant to the Illinois Municipal Code, ILL. REV. STAT. ch. 24, para. 8-3-14 (1977). *Kinzer*, 128 Ill. 2d at 440, 539 N.E.2d at 1217. The Comptroller at the time, Burrus, set up a new Trust and Agency Fund ("Fund 666") to account for ChicagoFest receipts and expenditures. *Id.* at 440-41, 539 N.E.2d at 1218. To finance the 1978 ChicagoFest, money was transferred from Fund 355 to Fund 666.

The main issue the court addressed was whether the Tort Immunity Act¹²⁴ shielded Grim from liability.¹²⁵ Because the plaintiff's complaint alleged breach of fiduciary duty, Grim argued the Tort Immunity Act applied.¹²⁶ The court, however, rejected this view and held that breach of fiduciary duty is controlled by the laws of agency, contract and equity.¹²⁷ Consequently, Grim could not claim immunity under the Tort Immunity Act.¹²⁸

Although the court rejected Grim's claim of immunity under the Tort Immunity Act, it added that Illinois recognizes a common law immunity for public officials.¹²⁹ This immunity protects a public official "from individual liability for the performance of discretionary duties in good faith."¹³⁰ Although the expenditures made by Grim violated the Chicago Municipal Code, the court found that he was unaware of the illegality of his actions because he

Id. at 441, 539 N.E.2d at 1218. The 1978 ChicagoFest lost money and the deficits were charged to Fund 355. *Id.* Money again was transferred between the funds in 1979. *Id.* In 1980, Grim became Comptroller, and executed a contract with Festivals, Inc., to manage a special event during the fall of 1980. *Id.* He followed his predecessors' practice and charged the funds expended under the contract to Fund 666. *Id.* Grim re-classified Fund 666 as a "Special City Programs Fund" to indicate that it now accounted for all special events. *Id.* After Grim left office, the remaining deficit of Fund 666 was charged to the City's corporate fund. *Id.* at 442, 539 N.E.2d at 1218.

124. ILL. REV. STAT. ch. 85, para. 1-101-10-101 (1985).

125. *Kinzer*, 128 Ill. 2d at 445, 539 N.E.2d at 1220. Before addressing the applicability of the Tort Immunity Act, the court first considered whether the expenditures violated the section of the Illinois Municipal Code, which states that no expenditures may be made unless an appropriation concerning that expense or contract previously has been approved by the City Council. ILL. REV. STAT. ch. 24, para. 8-1-7 (1987). Grim claimed that an exception to this rule existed for expenditures paid out of a special fund. *Kinzer*, 128 Ill. 2d at 444, 539 N.E.2d at 1219. Grim cited *Branigar v. Village of Riverdale*, 396 Ill. 2d 534, 72 N.E.2d 201 (1947) for the proposition that a special fund constitutes a segregation of income that never becomes part of the general fund and thus is not bound by the appropriation requirement. 128 Ill. 2d at 444, 539 N.E.2d at 1219. The *Kinzer* court indicated that this exception applies only when the payment of the contract price is limited to a special fund and such payment does not otherwise become an obligation of the municipality. *Id.* The court added that after Grim left his position, the deficits on the contracts he entered were charged to the City's corporate fund, thus making them an obligation of the City. *Id.* The court therefore concluded that the special fund exception did not apply. *Id.*

126. *Id.* Grim based his argument on section 847 of the Restatement of Torts, which considers breach of fiduciary duty to be based in tort. *Id.* at 445, 539 N.E.2d at 1220 (citing RESTATEMENT (SECOND) OF TORTS, § 847 (1979)).

127. *Id.*

128. *Id.*

129. *Id.* See *Mora v. State of Illinois*, 68 Ill. 2d 223, 369 N.E.2d 868 (1977); *People ex. rel. Scott v. Briceland*, 65 Ill. 2d 485, 359 N.E.2d 149 (1976) (both cases holding that a public official is immune from personal liability for the performance of discretionary duties undertaken in good faith).

130. *Id.* (citing *People ex. rel. Scott v. Briceland*, 65 Ill. 2d 485, 359 N.E.2d 149 (1976)).

merely followed practices established by his predecessors.¹³¹ Because he acted in good faith, the court concluded that he fell within the common law immunity doctrine and therefore was not liable for his actions.¹³²

Kinzer attempts to strike a balance between the need to hold governmental officials accountable for their misconduct and the need to protect those officials from personal liability for their good faith actions. No one would serve as a public official if, acting in good faith, he would be personally liable for failing to adhere to statutory requirements. The court in *Kinzer* struck this balance by emphasizing the official's good faith and shielding him from personal liability. Those officials acting in bad faith, or from corrupt motives, will continue to face strict liability under a constructive trust theory.¹³³

V. LICENSING REQUIREMENTS

Commensurate with its duty to protect the public, the Illinois General Assembly has the power to license professionals in particular fields. One example of this licensing power is the Medical Practice Act of 1987, which prohibits any person from practicing medicine without a license.¹³⁴ During the *Survey* year, the licensing provision of the Medical Practice Act fell under constitutional attack on due process grounds.¹³⁵

In *Potts v. Illinois Department of Registration and Education*,¹³⁶ Mary Ann Potts and Irwin Kossack ("plaintiffs") applied for licenses to practice naprapathy under the Medical Practice Act (the "Act").¹³⁷ The Department of Registration and Education (the "Department") denied their requests based on its determination that the Act currently in force did not contemplate the licensing of naprapaths.¹³⁸ Plaintiffs requested administrative review of

131. *Id.* at 445, 539 N.E.2d at 1220.

132. *Id.* at 446, 539 N.E.2d at 1220.

133. *See Village of Wheeling v. Stavros*, 89 Ill. App. 3d 450, 411 N.E.2d 1067 (1st Dist. 1980) (holding that Illinois recognizes an action by a municipality for imposition of a constructive trust on a third party's profits).

134. ILL. REV. STAT. ch. 111, paras. 4400-1 to 4400-63 (1987).

135. *See infra* notes 136-61.

136. 128 Ill. 2d 322, 538 N.E.2d 1140 (1989), *cert. denied*, 110 S. Ct. 540 (1989).

137. *Id.* at 325, 538 N.E.2d at 1141. The plaintiffs applied under the pre-1987 Medical Practice Act which stated "No person shall practice medicine, or any of its branches, or midwifery, or any system or method of treating human ailments without the use of drugs or medicines and without operative surgery, without a valid, existing license to do so." ILL. REV. STAT. ch. 111, para. 4403 (1983).

138. 128 Ill. 2d at 326, 538 N.E.2d at 1141. Naprapathy is a "therapeutic system of drugless treatment by manipulation of the ligaments and connective tissue." *Id.* at 325,

the Department's ruling in the circuit court; the court subsequently ordered the Department to determine whether naprapaths were entitled to licensure.¹³⁹ On the Department's motion, the trial court certified the question to the appellate court, which held that naprapaths were entitled to be licensed under the Act.¹⁴⁰

Following the appellate court's decision in *Potts*, the General Assembly amended the existing Medical Practice Act¹⁴¹ to create two categories of medical licenses.¹⁴² The first category encompassed licenses authorizing practice of all branches of medicine.¹⁴³ The second category included licenses permitting treatment of human ailments without the use of drugs or operative surgery.¹⁴⁴ Persons seeking licenses in this latter category were required to be graduates of a reputable chiropractic college.¹⁴⁵ In light of these changes, the Department informed plaintiffs that the appellate court's decision now lacked any authority to grant licenses to naprapaths.¹⁴⁶

The plaintiffs filed suit in circuit court challenging the Medical Practice Act as amended ("the 1987 Act") alleging that it deprived them of their right to practice naprapathy without due process of law.¹⁴⁷ The circuit court agreed and invalidated the 1987 Act as violative of the due process guarantees of both the Illinois Constitution and the United States Constitution.¹⁴⁸ The supreme court granted direct review.¹⁴⁹ The three issues raised by the appeal were

538 N.E.2d at 1140 (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1502 (3d ed. 1971)). According to the Department, the Act limits the treatment of human ailments without drugs or surgery to osteopaths and chiropractors. *Id.* at 326, 538 N.E.2d at 1141.

139. *Id.*

140. *Potts v. Illinois Dept. of Regis. and Educ.*, 145 Ill. App. 3d 960, 496 N.E.2d 253 (4th Dist. 1986).

141. ILL. REV. STAT. ch. 111, para. 4401 (1987).

142. ILL. REV. STAT. ch. 111, para. 4400-11(A) (1987) sets forth the requirements for obtaining a medical license, and para. 4400-11(B) sets forth the requirements for non-medical licenses which allows for the treatment of human ailments without drugs and operative surgery.

143. *Id.* para. 4400, § 11(A) (the applicant must be a graduate of a medical or osteopathic college to obtain a medical license).

144. *Id.* para. 4400, § 11B (to receive a non-medical license, the applicant must have graduated from a reputable chiropractic college that in the Department's judgment is in good standing).

145. *Id.*

146. *Potts*, 128 Ill. 2d at 328, 538 N.E.2d at 1142.

147. *Id.*

148. *Id.* See U.S. CONST. amend. V ("No person shall be . . . deprived of life, liberty, or property without due process of law . . .") and ILL. CONST. of 1970 art. I, § 2 ("No person shall be deprived of life, liberty or property without due process of law . . .")

149. *Potts*, 128 Ill. 2d at 328-29, 538 N.E.2d at 1142-43. Direct review of the circuit

whether the 1987 Act: 1) deprived plaintiffs of their right to practice naprapathy without due process of law; 2) violated equal protection guarantees under the state and federal law; 3) interfered with a patient's right to choose a mode of treatment.¹⁵⁰

Addressing plaintiff's due process challenge, the court stated that the right to pursue a profession is not a fundamental right for due process purposes.¹⁵¹ Consequently, the court determined that in order to satisfy the requirements of due process, the legislation needed only to be rationally related to its stated goal of protecting the public through regulation of the medical profession.¹⁵² Although plaintiffs contended that the 1987 Act went beyond mere regulation and effectively prohibited the practice of naprapathy, the court found nothing in the 1987 Act's language to prohibit the practice of naprapathy.¹⁵³ The 1987 Act merely required persons practicing naprapathy to be graduates of a chiropractic college licensed by the state to treat illnesses without drugs or surgery.¹⁵⁴ The court concluded that this education requirement was rationally related to the state's interest in protecting the public from unqualified medical practitioners and outweighed plaintiffs' interests in practicing naprapathy.¹⁵⁵ Because the 1987 Act's licensing provisions satisfied the rational relationship test, the court concluded that the 1987 Act did not deprive plaintiffs of due process.¹⁵⁶

The court also concluded that the 1987 Act did not violate the equal protection clause of either the federal or the Illinois Consti-

court's decision was obtained through Supreme Court Rule 302(a)(1). ILL. REV. STAT. ch. 110A, para. 302(a)(1)(1987).

150. 128 Ill. 2d at 328-29, 538 N.E.2d at 1142-43.

151. *Id.* at 330, 538 N.E.2d at 1143 (citing *People v. Gurell*, 98 Ill. 2d 194, 456 N.E.2d 18 (1983)). The *Potts* court noted that previous courts referred to the right to pursue a chosen profession as a fundamental right but have nonetheless applied the rational relationship test. *Id.* (citing *People v. Love*, 298 Ill. 2d 304, 131 N.E. 809 (1921) and *Lasdon v. Hallihan*, 377 Ill. 187, 36 N.E.2d 227 (1941)). *See also infra* at notes 154-56. Other cases also have applied this test to uphold regulations governing various other occupations and professions. *See, e.g.*, *Pozner v. Mauck*, 73 Ill. 2d 250, 383 N.E.2d 203 (1978) (holding that when legislation regulating an occupation is challenged as unreasonable, a court's only inquiry is whether the law is a rational means to accomplish this purpose); *Rios v. Jones*, 63 Ill. 2d 488, 348 N.E.2d 825, *appeal dismissed*, 429 U.S. 934 (1976) (holding that the right to hold a medical license may be affected by reasonable legislation) and *Wineblad v. Department of Regis. and Educ.*, 161 Ill. App. 3d 827, 515 N.E.2d 705 (1st Dist. 1987) (holding that the state may change the requirements for issuance or retention of occupational state licenses so long as it bears some reasonable relationship to legitimate interests in public health, safety and welfare).

152. 128 Ill. 2d at 330, 538 N.E.2d at 1143.

153. *Id.* at 332, 538 N.E.2d at 1144.

154. *Id.* at 333-34, 538 N.E.2d at 1145.

155. *Id.*

156. *Id.*

tutions because a rational basis for distinguishing naprapaths from chiropractors existed.¹⁵⁷ The court ruled that chiropractors, as a class, differ from naprapaths in terms of their medical theories, the training received, and the methods employed in practice.¹⁵⁸ Given these differences, the court held that the classification between the two groups was reasonably related to the legitimate government objective of protecting the public from unregulated medical practitioners.¹⁵⁹ Therefore, the 1987 Act also withstood Potts' equal protection challenge.

Finally, the court determined that the 1987 Act neither restricted a patient's right to choose a mode of treatment, nor prevented the practice of naprapathy; it only prevented its practice by an unlicensed practitioner.¹⁶⁰ Having rejected each of the plaintiff's constitutional challenges, the court upheld the 1987 Act as a valid exercise of state power.¹⁶¹

VI. ANNEXATION

During the *Survey* year, the Illinois Supreme Court addressed a significant case in the area of annexation procedures. In *In re Petition of the Village of Kildeer*,¹⁶² the court addressed whether a municipality could circumvent the annexation ordinance of the Municipal Code,¹⁶³ which prohibits a village from annexing more than ten acres of a tract of land.

In *Kildeer*, the Village of Kildeer (the "Village") petitioned to annex certain unincorporated territories pursuant to the Illinois Municipal Code's annexation provisions.¹⁶⁴ The Village submitted three petitions to three separate judges and did not request consolidation.¹⁶⁵ The Village then published separate notices in the Chi-

157. *Id.* at 335, 538 N.E.2d at 1145. In order for a law to disparately treat two groups of individuals, "[the] statutory classification must be reasonable and must rest on some ground of difference having a fair and substantial relation to the object of the legislation . . ." *Id.* (citing *Jenkins v. Wu*, 102 Ill. 2d 468, 468 N.E.2d 1162 (1984)).

158. *Id.*

159. *Id.* at 335, 538 N.E.2d at 1145.

160. *Id.* at 335, 538 N.E.2d at 1146. The court recognized that a licensed practitioner could utilize naprapathy as a method of treatment and that the Act did not restrict its use under such circumstances. *Id.*

161. *Id.*

162. 124 Ill. 2d 533, 530 N.E.2d 491 (1988).

163. ILL. REV. STAT. ch. 24, paras. 7-1-1 to 7-1-48 (1987).

164. 124 Ill. 2d at 536, 530 N.E.2d at 493. The applicable provisions of the Municipal Code can be found in ILL. REV. STAT. ch. 24, paras. 7-1-1 to 7-1-48 (1985).

165. 124 Ill. 2d at 536, 530 N.E.2d at 493. By not requesting consolidation, the Village attempted to detract attention from its attempt to annex more land than the annexation statute allowed. *Id.* at 538, 530 N.E.2d at 493.

chicago Sun-Times for each hearing.¹⁶⁶ None of those who would have objected to the annexation were aware of these notices; thus, no objectors appeared at the hearings.¹⁶⁷ Additionally, the owners of the annexed property were not aware of and did not consent to the annexation.¹⁶⁸

The trustees and owners of the properties brought suit to vacate the annexation orders, alleging that the Village violated the annexation ordinance by attempting to annex more property than was allowed by the applicable ordinance¹⁶⁹ and by giving improper notice of its annexation procedures.¹⁷⁰ The circuit court granted all three petitions, stating that the notice provided by the Village circumvented annexation ordinance's requirements.¹⁷¹ The appellate court affirmed the circuit court regarding the first petition, agreeing that notice was improper.¹⁷² Despite proper notice regarding the second petition, the appellate court also affirmed the trial court's order vacating the annexation ordinance.¹⁷³ The appellate court remanded the third petition to the trial court so the Village could answer the objectors' complaint.¹⁷⁴

On appeal, the Illinois Supreme Court first determined that a petition to vacate under section 2-1401 of the Illinois Code of Civil Procedure¹⁷⁵ is the appropriate form of action to challenge the an-

166. *Id.* The Village president published the notices in the Chicago Sun-Times, even though the Village normally published legal notices in local papers. *Id.* at 539-40, 530 N.E.2d at 494. In addition, the Village administrator of a neighboring municipality who watched the local papers for legal notices found none regarding this property's annexation. *Id.* at 540, 530 N.E.2d at 494.

167. *Id.* at 538, 530 N.E.2d at 493.

168. *Id.* at 542, 530 N.E.2d at 495. Subsequent to the annexation hearings, the Village Clerk of Kildeer attended a meeting in the neighboring municipality in which rezoning of one of the properties in question was discussed, but she remained silent regarding the Village's annexation procedures. *Id.* at 540, 530 N.E.2d at 494. She also attended a second meeting in which the Village of Lake Zurich discussed annexing one of the properties in question. *Id.* At this meeting's end, she read a prepared statement indicating that the Village of Kildeer had already initiated the annexation proceedings. *Id.* The property's contract purchaser promptly requested, but was denied, documents regarding the annexation from the Village Clerk. *Id.* at 540-41, 530 N.E.2d at 494-95.

169. ILL. REV. STAT. ch. 24, para. 7-1-2 (1987) indicates that a municipality may not annex a tract of land in excess of ten acres.

170. 124 Ill. 2d at 536-37, 530 N.E.2d at 493. The plaintiffs claimed that the Village evaded the notice requirement by separating the petitions instead of consolidating them, by not revealing the annexation proceedings at a rezoning meeting and by publishing legal notice of the annexation in the Chicago Sun-Times, instead of a local paper. *Id.* at 538-40, 530 N.E.2d at 493-95.

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. ILL. REV. STAT. ch. 110, para 2-1401 (1987) provides relief from final orders

nexation ordinance.¹⁷⁶ The supreme court next considered whether the circuit court erred in granting the petitions to vacate under section 2-1401.¹⁷⁷

The supreme court stated that the propriety of the trial court's order depended on whether section 7-1-2 permitted the Village to annex the three tracts, each under ten acres, which were carved out of tracts of land larger than ten acres.¹⁷⁸ Based upon its reading of the statute's plain language, the court interpreted section 7-1-2 to prohibit a municipality from annexing a tract of land that exceeds ten acres, no matter how many ordinances it adopts to do so.¹⁷⁹ Thus, the Village's piecemeal method of annexation violated the ten acre limitation, so the court invalidated each of the Village's petitions.¹⁸⁰

Finally, the court held that the Village's notices in a non-local newspaper and its non-disclosure of the annexation proceedings at the Lake Zurich annexation meeting¹⁸¹ were designed to prevent the plaintiffs from discovering the legal notices of the annexation hearings.¹⁸² The court stated that, although the Village's efforts technically satisfied the notice requirements, the provided notice

and judgments after thirty days of their entry. The petition must be filed in the same proceeding in which the judgment was entered, but which is not a continuation of the original judgment, and it must be supported by an affidavit. *Id.* In addition, the petition must be filed within two years of the original judgment. *Id.* The filing of such petition does not suspend the original judgment. *Id.*

176. *Kildeer*, 124 Ill. 2d at 545, 530 N.E.2d at 496. On appeal, the Village argued that the plaintiffs could not use section 2-1401 to petition to vacate a final order that approved an annexation ordinance. *Id.* at 542, 530 N.E.2d at 495. The Village asserted, and the supreme court agreed, that the proper action for challenging a completed annexation is a *quo warranto* action, an action in which the objector challenges the authority that allowed the annexation. *Id.* at 543, 530 N.E.2d at 496. Yet, the court found that because these annexation orders were vacated, they were not complete and therefore a *quo warranto* action was not necessary. *Id.* A section 2-1401 petition sufficed to challenge the final order. *Id.* at 543-44, 530 N.E.2d at 496.

177. A petition to vacate may be granted when the moving party offers a meritorious defense to the contested action. ILL. REV. STAT. ch. 110, para. 2-1401 (1987). Here, the objectors defended by asserting that all of the Village's annexation ordinances violated the Municipal Code. *Kildeer*, 124 Ill. 2d at 545, 530 N.E.2d at 496. The Village denied that any such violation existed and therefore argued that the objectors lacked a meritorious defense. *Id.* The ordinance stated that a municipality may annex any property under ten acres but a larger tract's annexation requires the owner's express consent. ILL. REV. STAT. ch. 24, para. 7-1-2 (1987). The Village claimed that because each of the three petitions for annexation was under ten acres, it did not violate the ordinance. 124 Ill. 2d at 546, 530 N.E.2d at 496.

178. *Id.* at 545, 530 N.E.2d at 497.

179. *Id.* at 546-47, 530 N.E.2d at 497.

180. *Id.* at 547, 530 N.E.2d at 497.

181. *See supra* note 170.

182. 124 Ill. 2d at 550, 530 N.E.2d at 499.

“deprive[d] objectors of the notice contemplated by the Municipal Code . . . [and] . . . vitiated the effectiveness of the notice as to the affected property owners.”¹⁸³ Because the Village provided insufficient notice, the plaintiffs were not negligent in failing to discover the notices; thus, plaintiffs did exercise due diligence in filing the section 2-1401 petition.¹⁸⁴

The crazy-quilt pattern of annexations in Cook and the collar counties, and the plethora of litigation over annexations in Illinois, stands out in sharp contrast to establishment of municipal boundaries by other states' legislatures. The present Illinois statutory procedure permits “border wars” over desirable, tax generating properties and leaves border determination to competing municipalities. Unfortunately, these local government bodies often lack the resolve to settle these disputes on an unselfish basis. Because the legislature has long manifested a desire to avoid this basically political issue, the Illinois version of the Old West's “range wars” will continue.

VII. EFFECTIVE DATE OF LAWS REGARDING REFERENDA REQUIREMENTS

During the *Survey* year, the Illinois Supreme Court addressed one case involving a referendum issue. In *Mulligan v. Joliet Regional Port District*,¹⁸⁵ the plaintiff sought to prevent the Joliet Regional Port District (“Port District”) from dealing with Lewis University's airport before receiving referendum approval from the Port District's voters.¹⁸⁶ The trial court denied plaintiff's request for declaratory relief and plaintiff appealed directly to the Illinois Supreme Court.¹⁸⁷ The supreme court affirmed and held that the Port District is not required to hold a referendum before expanding.¹⁸⁸

The Joliet Regional Port District Act (“Act”) created the Port District¹⁸⁹ and granted it the power to “locate, establish and main-

183. *Id.*

184. *Id.*

185. 123 Ill. 2d 303, 527 N.E.2d 1264 (1988).

186. *Id.* at 305, 527 N.E.2d at 1265. An amendment to the Port District's enabling Act required voters' approval. See P.A. 83-1102 (amending ILL. REV. STAT. ch. 19, para. 254.6 (1987)).

187. *Mulligan*, 123 Ill. 2d at 320, 527 N.E.2d at 1272. The supreme court allowed a direct appeal pursuant to Rule 302(b), which permits the supreme court to take a direct appeal when the public interest requires expeditious determination. ILL. REV. STAT. ch. 110A, para. 302(b) (1987).

188. 123 Ill. 2d at 320, 527 N.E.2d at 1272.

189. ILL. REV. STAT. ch. 19, paras. 251 -83 (1987).

tain a public airport . . . within its corporate limits”¹⁹⁰ The Act also allowed the Port District to “construct, develop, expand, extend and improve any such airport”¹⁹¹ Beginning in 1980, the Port District began investigating the possibility of creating a new airport in its district. It negotiated with Lewis University, which operated a small airport, and on December 30, 1983, it entered into an agreement to purchase the Lewis University airport.¹⁹² About the time of these negotiations, the legislature passed Public Act 83-1102, which prohibited the Port District from expanding airport facilities without referendum approval from Port District voters.¹⁹³ The plaintiff claimed that this law became effective on January 5, 1984, which would have made it applicable to the Port District’s transaction with the University.¹⁹⁴ In contrast, the Port District claimed the amendment became effective on July 1, 1984 and was therefore inapplicable to the transaction.¹⁹⁵

Although three issues were presented on appeal,¹⁹⁶ the issue regarding the law’s effective date was determinative. The court began its analysis of the effective date issue by noting that pursuant to statute, laws passed prior to July 1, become effective on January 1 of the following year; laws passed after June 30, become effective on July 1 of the following year.¹⁹⁷ The court recounted the legislative history of Public Act 83-1102¹⁹⁸ and stated that the issue involved determining which of two pertinent dates was the “passage” date. The two dates involved were the date of the bill’s original passage and the date on which the legislature accepted the bill, as amended by the governor.¹⁹⁹

After careful consideration of the disparate views on this issue, the court held that a bill *passes* when, upon the Governor’s accept-

190. *Id.* para. 254.6.

191. *Id.*

192. 123 Ill. 2d at 307, 527 N.E.2d at 1266.

193. *Id.* at 306-07, 527 N.E.2d at 1266. The Act also prohibited airport construction, development and improvement without voter approval. *Id.*

194. *Id.* at 311-12, 527 N.E.2d at 1268.

195. *Id.*

196. The three issues included 1) the effective date of Public Act 83-1102; 2) whether the Port District exercised its power to acquire, operate and expand the Lewis University airport prior to the effective date of Public Act 83-1102; and 3) whether the amendment to the Joliet Regional Port District Act as contained in Public Act 83-1102 violated the provisions of article IV, § 13, of the Illinois Constitution of 1970 as special legislation. *Id.* at 311, 527 N.E.2d at 1267.

197. ILL. REV. STAT. ch. 1, paras. 1201, 1202 (1987). The Illinois Constitution mandates this statute. See ILL. CONST. of 1970 art. IV, § 10.

198. Public Act 83-1102 originated as House Bill 2244, which was introduced in 1983.

199. *Mulligan*, 123 Ill. 2d at 312, 527 N.E.2d at 1268.

ance, the last legislative act necessary for it to become law takes place.²⁰⁰ In this case, the final legislative action was the legislature's acceptance of the Governor's specific recommendations for change.²⁰¹ Thus, the bill passed on November 1, 1983 when the legislature accepted the Governor's changes.²⁰² Therefore, the bill became effective on July 1, 1984.²⁰³

Having resolved this issue, the court concluded that "because the Port District had fully exercised all the powers granted to it pursuant to the [Port District] Act²⁰⁴ by June 30, 1984, the referendum amendment . . . was not applicable to the transaction between the Port District and Lewis University."²⁰⁵ The court also held that once the Port District exercised its authority to establish an airport, it would not be required to hold a referendum to improve and extend that airport.²⁰⁶

The referendum concept for matters of government policy is relatively recent in Illinois, having been first included in the Illinois Constitution in 1970.²⁰⁷ Prior thereto, referenda generally were limited to the formation, dissolution, annexation and disconnection of utilities, along with voter approvals for tax increases and bond issues. Before 1970, the only other question put to the voters was the "local option," wherein voters could decide whether a precinct was to be "wet" or "dry." Disputes over elections have almost become an art form in Illinois and increased use of referenda will be a fruitful ground for more litigation in years to come.

VIII. LEGISLATION

During the *Survey* period, the Illinois General Assembly passed several bills pertaining to state and local governments. This section will discuss the new School Reform Act,²⁰⁸ the Local Govern-

200. *Id.* at 314, 527 N.E.2d at 1269 (citing *People ex rel. v. Howlett*, 50 Ill. 2d 242, 278 N.E.2d 84 (1972)).

201. *Id.* at 314-15, 527 N.E.2d at 1270.

202. *Id.* at 315, 527 N.E.2d at 1270.

203. *Id.*

204. ILL. REV. STAT. ch. 19, para. 254.6 (1983). The Port District has the power to locate, establish, and maintain a public airport within its corporate limits. It may also construct, develop, expand, extend and improve any such airport or airport facility. *Id.*

205. *Mulligan*, 123 Ill. 2d at 318, 527 N.E.2d at 1271.

206. *Id.* at 320, 527 N.E.2d at 1272. In response to the plaintiff's final argument for retroactive application of the referendum amendment, the court stated absent an express provision authorizing retroactive application, the statute could not be so applied. *Id.* at 321, 527 N.E.2d at 1273.

207. ILL. CONST. of 1970 art. VII, § 11.

208. P.A. 85-1418.

ment Debt Reform Act,²⁰⁹ the State Government Act,²¹⁰ and the Local Government Act.²¹¹

A. *The School Reform Act*

The School Reform Act ("Act") adds several new paragraphs to the existing School Code. The first addition specifies the new Act's intent and goals.²¹² It is intended to assure that students attain proficiency in basic subjects and that they attend school regularly.²¹³ The Act also stresses preparing students for higher education and allowing teachers the authority to make decisions about teaching methods.²¹⁴ As a means to achieving these goals, the legislature intends to make the individual local school the unit for educational governance by placing control over schools in the hands of the parents, community residents, teachers and the principal.²¹⁵ Progress toward the goals will be measured in terms of student attendance, graduation rates, and scores on national tests.²¹⁶ This provision seems to mandate a certain amount of improvement in these areas, each year.²¹⁷

Perhaps the most significant part of the Act is its establishment of local school councils.²¹⁸ Each council will consist of the school's principal and ten elected members, six of whom will be parents of students currently enrolled at the school, two of whom will be community residents, and the two remaining will be teachers at that school.²¹⁹ The membership of each local school council will be encouraged to reflect the racial and ethnic makeup of the school's students.²²⁰ The council will be elected by local parents and community members.²²¹

The School Reform Act also enumerates the specific powers and

209. P.A. 85-1419.

210. P.A. 85-1185.

211. P.A. 85-1342.

212. ILL. REV. STAT. ch. 122, para. 34-1.01 (West Supp. 1988).

213. *Id.* para. 34-1.01 (A)(1)-(2).

214. *Id.* para. 34-1.01 (A)(3), (8).

215. *Id.* para. 34-1.01 (B).

216. *Id.* para. 34-1.02.

217. *Id.* For example, paragraph 23-1.02 (2) states that "the average daily student attendance within the district in each of the 1989-90, 1990-91, 1991-92, 1992-93 and 1993-94 school years exceeds by at least 1% the average daily student attendance within the district for the immediately preceding school year." 1986 Ill. Legis. Serv. 85-1418 (West) (to be codified at ILL. REV. STAT. ch. 122, para. 23-1.02 (1989)).

218. ILL. REV. STAT. ch. 122, para. 34-2.1 (West Supp. 1988).

219. *Id.* para. 34-2.1 (a).

220. *Id.*

221. *Id.* para. 34-2.1 (b).

duties of the new local school councils.²²² One of the primary duties of the new councils will be to evaluate the performance of the school's principal and to take responsibility for renewing his employment contract.²²³ Should the principal's contract not be renewed, the council may choose a new principal directly or may submit a list of candidates to the subdistrict's superintendent.²²⁴

The local school council is also authorized to approve the expenditure plan prepared by the principal with respect to all funds allocated and distributed to the school by the Board of Education.²²⁵ The council also may request the principal to eliminate jobs within the school and apply the foregone salaries to other uses within the district or open new positions.²²⁶ The local school council also may make recommendations to the principal concerning textbook selection and may advise the principal regarding attendance and disciplinary policies.²²⁷ Additional duties of the local councils include approving a school improvement plan, evaluating the allocation of teaching resources and making recommendations to the principal and the subdistrict superintendent concerning their respective duties.²²⁸

The Act also develops subdistrict councils that will be composed of one parent or community member from each local school council.²²⁹ The subdistrict council's primary duties will be to promote coordination and communication among the local school councils, to disseminate research concerning educational techniques, to coordinate the training of the local councils, to coordinate joint operation of school programs and services, and to provide voluntary dispute resolution of problems encountered by the Local School Councils.²³⁰

The School Reform Act also expanded some of the School Board's existing duties and powers.²³¹ Under the new provisions, the Board may develop a policy for capital improvements to the school buildings, make available the necessary courses to comply with the Board of Higher Education's college entrance criteria effective in 1993, and encourage mid-career changes into the teach-

222. *Id.* para. 34-2.3.

223. *Id.* para. 34-2.3(1),(2).

224. *Id.* para. 34-2.3 (2).

225. *Id.* para. 34-2.3(4).

226. *Id.* para. 34-2.3(4)(e).

227. *Id.* para. 34-2.3(5), (6).

228. *Id.* para. 34-2.3(7),(8),(9) and (10).

229. *Id.* para. 34-2.5(a).

230. *Id.* para. 34-2.5(a)(1)-(5).

231. *Id.* para. 34-18.

ing profession.²³² Although the Act enumerates these new powers, it does not set forth procedures for their enactment or execution.

Another significant aspect of the School Reform Act is the limitation of the Board's spending on noninstructional costs such as centralized administrative costs and administrative support service costs.²³³ Under the School Reform Act, resources are targeted more toward educational programs, building maintenance and safety services for the districts' students.²³⁴

An important facet of the Act is that each municipality's School Finance Authority ("Authority") has the power to approve and monitor the development and implementation of the Board's Approved System Wide Educational Reform Goals and Objectives Plan.²³⁵ The general objectives are to ensure education services to all children over four years old, to reduce class size in future years, to increase parental involvement, to enhance accountability of principals, to ensure well-trained staff, and to distribute available funds equitably among the districts.²³⁶

The Authority may also promulgate rules concerning the management and direction of the School Board, if the Authority sees obstacles to the development or implementation of those goals.²³⁷ The Act allows local finance authorities to watch over the Board's activities.²³⁸ On the whole, the School Reform Act is an effort to localize control over Illinois state schools.

In sum, it has always been ironic that purely administrative offices such as that of state clerk or treasurer are elective, but the important offices that affect most Chicago citizens' lives such as that of school board or park district officers are appointed. The return of control over school issues to the local communities may remedy irony. Only the future will tell if the School Reform Act will succeed. As of this Article's date, over fifteen lawsuits have been filed contesting the school elections, the powers and duties of the local boards, and other issues. If nothing else, the rush of litigation shows that parents and citizens are taking the School Re-

232. *Id.* paras. 34-18(24) to (26).

233. *Id.* para. 34-43.1(A).

234. *Id.*

235. *Id.* paras. 34A-201a and 34A-412. The Approved System Wide Education Reform Goals and Objectives Plan, which sets forth the objectives of the Board, refers to the educational reform goals and objectives that have been accepted by the School Finance Authority. ILL. REV. STAT. ch. 122, para. 34A-103(j) (West. Supp. 1989).

236. *Id.* para. 34A-412.

237. *Id.* para. 34A-201a.

238. *Id.*

form Act seriously.²³⁹

B. *The Local Government Debt Reform Act*

A significant addition to the Local Government Debt Reform Act was codified during the *Survey* year. Under the amendment, section 11-76.1-1 of the Illinois Municipal Code,²⁴⁰ when a municipality adopts and files with the municipal clerk an installment purchase or lease agreement, the municipality may issue debt certificates to any person either in lieu of or as evidence of the amounts payable under the lease or agreement.²⁴¹ Debt certificates are a type of commercial paper that may be issued to a creditor, here a lessor, and may be used by the creditor as collateral with another financial institution. The certificates may contain such terms as are provided for the issuance of bonds generally, under section 10 of the Local Government Debt Reform Act.²⁴²

Although a municipality could issue debt certificates to creditors before this section to the statute was passed, the addition by the legislature legitimizes the practice. This section is a continuing trend by the legislature to keep up with the federal government's tax reform efforts.

C. *The Local Government Act*²⁴³

The significant revision to the Local Government Act adopted during the *Survey* year includes a section regarding leasing property of the Metropolitan Water Reclamation District of Greater Chicago (the "District") to other individuals or entities.²⁴⁴ The Act states that such a lease shall provide for a fixed annual rental payment for the first year that is not less than six percent of the fair market value as determined under the Local Government Act.²⁴⁵

239. Editor's Note: In October 1989, 541 Chicago public schools held elections and voted in 5400 local school council members. When half the councils had to make retention decisions with regard to school principals, protests disrupted classes at half a dozen schools. Students and angry parents demonstrated against dismissals of principals that were allegedly based upon race or ethnic origin. Violence erupted at a racially-mixed school on the southwest side over the removal of a white principal, and tensions ran high at three Latino schools where non-Latino principals were forced out. See Wilkerson, *Fate of Principals Splits Some Chicago Schools*, N. Y. Times, March 2, 1990, at 10, col. 2.

240. 1988 Ill. Legis. Serv. P.A. 85-1419 (West) (effective Dec. 15, 1988) (codified at ILL. REV. STAT. ch. 24, para. 11-76.1-1).

241. *Id.* para. 11-76.1-1(ii).

242. *Id.*

243. 1988 Ill. Legis. Serv. 85-1342 (West) (effective July 1, 1989), (codified at ILL. REV. STAT. ch. 42, para. 327c(7)).

244. *Id.*

245. *Id.*

Payment of this rent is subject to annual adjustments based on changes in the Consumer Price Index.²⁴⁶ Any lease of fifteen years or more must provide for a determination of the fair market value after the initial ten years and every ten years thereafter.²⁴⁷ The annual rental payments shall be adjusted so that the ratio of annual rental to the fair market value will be the same as the ratio for the first year of the preceding ten-year period.²⁴⁸ The ratio provision assures that the rent may increase at the same proportion that the fair market value increases. This section, therefore, does not put a ceiling on the amount of rent that the District may charge.

Additionally, the District may require compensation to be paid, in addition to rent, based on a reasonable percentage of revenues derived from the lessee's business operations on the premises.²⁴⁹ The District may also require additional compensation in the form of services.²⁵⁰

This is a reform measure passed by the legislature at the request of the Water Reclamation District. In sum, the Act removes the rental increase cap for long term leases and entitles the District to a percentage of the lessees' revenues in addition to the fixed rent. The rental cap made no sense where the property increased dramatically along the District's waterways. The District spent several billion dollars improving the water quality of the waterways but could not share fully in the enhanced value of its property attributable to its efforts. Percentage rentals are common in most commercial leases and there was no justification for limiting the District only to fixed rentals. It is hoped that the thousands of acres of land the District owns in Cook County will begin to realize increased revenues which will be passed on to taxpayers in terms of lower real estate tax levies.

IX. CONCLUSION

During the *Survey* year, the Illinois Supreme Court and the General Assembly made no startling changes in Illinois law. If there was a discernable trend, it was to give greater protection to public employees as Illinois moves further from its traditional patronage politics. This continuity of decisions and legislation may be attrib-

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.* para. 327c(8).

250. *Id.* The Act states that additional compensation in the form of services shall not be considered in determining the highest bid, which is to be determined only on the initial annual rental payment. *Id.*

utable in large measure to the general continuity in members of both the Illinois Supreme Court and the General Assembly. That is soon to change with the election of several new justices to the Supreme Court and a legislative re-map for the 1992 General Assembly elections. As for the issue of school reform, only time will tell if the legislative attempts at reform prove effective.