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State and Local Government

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State and Local Government

Victor P. Fillippini, Jr. and Paul Racette***

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I. INTRODUCTION

During the *Survey* period,¹ Illinois courts faced a vast array of issues relating to state and local governmental law. Matters involving territorial jurisdiction,² environmental quality and control,³ governmental liability,⁴ elections,⁵ property rights and regulations,⁶ and public finance⁷ came before the judiciary for review. In response, the courts decided some new questions of law and more sharply defined prior interpretations of state and local governmental law in Illinois.

II. TERRITORIAL JURISDICTION

A. Detachment

Recent demographic trends have precipitated new concerns about school districts and other local governmental units. Faced with increased operating and labor costs as well as greater responsibility in providing services to their citizens, local governments often have tried to expand their tax bases to cope with new financial strains. The competition for bigger and broader tax bases and better services often underlies detachment and annexation disputes between local governmental units.⁸

For school districts, the battles to obtain or retain jurisdiction over property are especially acute. The threat of detachment not only endangers the property tax revenues for a school district, but also may reduce the state aid payments that are based on enrollment figures. The loss of significant amounts of revenue necessarily leads to severe alteration or elimination of programs, which in turn affects staffing needs and even the viability of a district. Consequently, on several occasions during the *Survey* period, courts adjudicated detachment and annexation disputes involving school and other local government districts.

In one case, *Phillips v. Special Hearing Board*,⁹ the petitioners sought to detach their neighborhood from the Rockford school dis-

1. The *Survey* period covers decisions issued between July 1, 1986, and July 1, 1987.

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

3. See *infra* notes 40-63 and accompanying text.

4. See *infra* notes 64-123 and accompanying text.

5. See *infra* notes 124-61 and accompanying text.

6. See *infra* notes 162-202 and accompanying text.

7. See *infra* notes 203-27 and accompanying text.

8. See generally *Unity Ventures v. County of Lake*, 631 F. Supp. 181, 193-94 (N.D. Ill. 1986).

9. 154 Ill. App. 3d 799, 504 N.E.2d 1251 (2d Dist. 1986), *appeal denied*, 115 Ill. 2d 550, 511 N.E.2d 436 (1987).

trict and annex it to the Winnebago district.¹⁰ The hearing board refused to grant their petition, and the circuit court reversed.¹¹ Upon review, the Illinois Appellate Court for the Second District analyzed the petition and relied on statutory and case law definitions of proper detachment. These definitions focused on elements such as the ability of either district to satisfy the state's minimum standards of recognition,¹² the possibility of serious financial detriment to the district facing detachment,¹³ the advantages that different districts could offer students, the relative distances of the schools from the children's residences, the students' identification with a particular neighborhood, the likelihood of participation in extracurricular activities, and the convenience of the proposed change to the parents and children.¹⁴

After weighing the evidence regarding these elements, the appellate court determined that the residents of the territory at issue could benefit equally in either the Rockford or the Winnebago district.¹⁵ In order to resolve the controversy between the districts, the court looked next to the "will of the people," and found that eighty percent of the residents in the territory favored detach-

10. *Phillips*, 154 Ill. App. 3d at 800, 504 N.E.2d at 1252.

11. *Id.*

12. *Id.* at 805, 504 N.E.2d at 1255. The statutory standards of recognition do not need to be satisfied in all detachment cases. See *Davis v. Regional Bd. of School Trustees*, 155 Ill. App. 3d 185, 507 N.E.2d 1352 (5th Dist. 1987). In *Davis*, the court held that because the current district was an "old type unit" as distinguished from a "community unit" district, the loss in tax base caused by detachment would not place the district in contravention of the minimum tax base recognition standard. This statutory standard applied only to "community unit" districts undergoing detachment, which are required to keep their tax base equal to such a minimal level as is required before new districts may be created. *Id.* at 193, 507 N.E.2d at 1357.

13. 154 Ill. App. 3d at 803, 504 N.E.2d at 1254-55. Courts look to the percentage of the lost tax revenue over the district's total revenue to evaluate serious financial detriment. In *Phillips*, the loss of revenue to the district would be .13%, which the court characterized as a "minimal amount." *Id.* at 803, 504 N.E.2d at 1254. In *Davis*, an even larger percentage of .3% was held to be de minimis financial injury to the losing district, and thus not sufficient to deny detachment. 155 Ill. App. 3d at 188-89, 507 N.E.2d at 1354.

A similar standard applies in detachment proceedings involving fire protection districts. If the financial effect of detachment would impair materially the ability of the district to continue to provide fire protection, detachment would be precluded. See *In re Elk Grove Fire Protection Dist.*, 148 Ill. App. 3d 921, 500 N.E.2d 52 (1st Dist. 1986). In denying the proposed detachment, the court in *Elk Grove* noted that "material impairment" is to be determined on a case-by-case basis with consideration of the specific facts and circumstances, as opposed to a strict numerical standard. *Id.* at 927, 500 N.E.2d at 56.

14. *Phillips*, 154 Ill. App. 3d at 805, 504 N.E.2d at 1255.

15. *Id.* at 806, 504 N.E.2d at 1256.

ment.¹⁶ Because of the strong community preference for the detachment, the court honored the "will of the people" and allowed the detachment.¹⁷ Thus, although courts previously have not emphasized the "will of the people" when evaluating petitions for detachment, the *Phillips* court demonstrates a trend towards increasing reliance on the "will of the people" in deciding factually ambiguous cases.¹⁸

Although the courts have shown deference to the "will of the people" when the majority is seeking school district detachment, this deference does not translate into a relaxation of the procedural and substantive requirements for territorial detachment. All procedures must be satisfied fully.¹⁹ One of these requirements is that the territory within a school district be contiguous.²⁰ Although this contiguity requirement clearly applies to school districts created under the Illinois School Code,²¹ no statute imposes a similar requirement on "special charter" school districts. During the *Survey* period, the question arose whether "special charter" districts also must be and remain contiguous.

In *Board of Education Rockford School District 205 v. Hearing Board*,²² the court held that a petition for detachment from a special charter district will be denied when it would cause noncontiguity to the former district by creating "islands" wholly separate from the district.²³ The court found the ability of the special charter district to provide services to the outlying islands would be hampered severely if detachment were allowed.²⁴ The court there-

16. *Id.* at 806-07, 504 N.E.2d at 1252, 1256-57.

17. *Id.* at 807, 504 N.E.2d at 1257.

18. This focus on the "will of the people" seems to have played a significant role in numerous detachment cases. In *Davis*, when detachment was granted, the residents favored the petition. 155 Ill. App. 3d at 188, 507 N.E.2d at 1354. On the other hand, in *Fixmer v. Regional Bd. of School Trustees*, 146 Ill. App. 3d 660, 497 N.E.2d 152 (2d Dist. 1986), in which detachment was denied, the "will of the people" opposed the action. *Id.* at 665, 497 N.E.2d at 156. Thus, in the absence of clear evidence in support of or against a detachment petition, the "will of the people" is indeed given considerable weight by courts in their rulings.

19. Detachment will not be considered when all statutory petitioning requirements are not met. In *Betts v. Regional Bd. of School Trustees*, 151 Ill. App. 3d 465, 502 N.E.2d 787 (2d Dist. 1987), the court strictly required fulfillment of all detachment petitioning procedures, and found a lack of jurisdiction by the regional board over the matter when such requirements were not met. *Id.* at 468-71, 502 N.E.2d at 790-91.

20. ILL. REV. STAT. ch. 122, para. 7-4 (1985).

21. *Id.* at paras. 1-1 to 36-1.

22. 152 Ill. App. 3d 936, 505 N.E.2d 32 (2d Dist. 1987), *appeal denied*, 115 Ill. 2d 535, 511 N.E.2d 425 (1987).

23. 152 Ill. App. 3d at 940, 505 N.E.2d at 35.

24. *Id.*

fore denied the proposed detachment and held that there was a common law requirement of contiguity.²⁵ In making this ruling, the court distinguished the instant situation from dictum in earlier cases that suggested contiguity is not necessary.²⁶ The court emphasized that the earlier cases involved irregularly shaped territories that shared boundaries with the school district, whereas the situation at issue did not.²⁷

During the *Survey* period, Illinois courts have made it clear that a detachment cannot be allowed if it would disrupt the contiguity of a territory within a school or other local district. In addition, courts recognize this contiguity requirement in analyzing all detachment proposals, even if a previously uncontested detachment already has created noncontiguity within the district or between the districts.²⁸

B. Annexation

The continuing demand for additional land development has expanded the boundaries of metropolitan communities further into rural areas. This need for expansion often conflicts with the desire to preserve the character of a rural area. Furthermore, this conflict is complicated because municipalities must balance their tax bases with their increasing obligations to provide services, necessitating expansion in order to collect more income from annexed property owners. Consequently, annexation disputes inevitably arise and the courts must resolve them. Several annexation disputes were adjudicated during the *Survey* period.

In a case of first impression, the Illinois Appellate Court for the

25. *Id.* at 939, 505 N.E.2d at 35.

26. *Id.*

27. *Id.* Although "compactness" of territory is a factor in detachment proceedings, irregularity of shape or lack of compactness will not automatically bar a detachment. In *Davis*, the court held that although detachment would create a "corridor" within the former district, the detachment was nevertheless allowed because the district was already irregular in shape and no part of the district would be isolated by the detachment so as to create noncontiguity. 155 Ill. App. 3d at 192, 507 N.E.2d at 1357.

28. The validity of the noncontiguity defense to detachment despite a previous waiver of such defense was upheld in *Towanda Community Fire Protection Dist. v. Town of Normal*, 154 Ill. App. 3d 1, 506 N.E.2d 461 (4th Dist. 1987). In *Towanda*, a petition to prevent automatic disconnection was granted when objectors asserted that the disconnection would create a lack of contiguity. *Id.* at 5, 506 N.E.2d at 463-64. The town argued that a lack of contiguity already existed because of an earlier unprotested disconnection. Thus, the town asserted that the objectors had waived this noncontiguity defense. *Id.* at 2-3, 506 N.E.2d at 462. The court held that each disconnection must be considered a separate transaction. Therefore lack of contiguity can be raised again to bar the detachment despite prior waiver in another disconnection proceeding. *Id.* at 4, 506 N.E.2d at 463.

Second District interpreted a statute allowing annexation of non-contiguous property when the only intervening property blocking contiguity is forest preserve property.²⁹ In *People ex. rel. Ryan v. Village of Bartlett*,³⁰ the plaintiffs sought to prevent an annexation and argued that the use of the word "only" implies that only forest preserve land may lie between any boundary of a village and the property sought to be annexed.³¹ In response, the village argued that only one, not all, of the boundaries, must be separated by the forest preserve to allow annexation.³² The court agreed with the village's contention that only one boundary need be separated by forest preserve property to satisfy the language of the statute, and rejected the plaintiff's interpretation as an illogical reading of the statute.³³

In reviewing petitions for annexation, Illinois courts have continued to require that all procedures be followed strictly.³⁴ Similarly, any efforts to prevent the annexation of property must be based upon proper statutory authority. If a municipality attempts to overstep this authority, its actions will not be upheld by the court. This principle was enunciated in *Village of Long Grove v. Village of Kildeer*.³⁵ In that case, the named municipalities entered into an agreement that purportedly prohibited either one from annexing land beyond a jurisdictional boundary line which they mutually established.³⁶ When Kildeer decided to disregard the agreement, Long Grove filed suit to enforce it.³⁷ The court refused to uphold the agreement, ruling that the authority of the municipalities extended to only the setting of planning boundaries, and

29. ILL. REV. STAT. ch. 24, para. 7-1-1 (1985). The statute provides in relevant part that "territory which is not contiguous to a municipality but is separated therefrom only by a forest preserve district may be annexed to the municipality"

30. 151 Ill. App. 3d 533, 502 N.E.2d 443 (2d Dist. 1986).

31. *Id.* at 535, 502 N.E.2d at 445-46.

32. *Id.* at 535, 502 N.E.2d at 446.

33. *Id.* at 536, 502 N.E.2d at 446. The court observed that, if the plaintiff's interpretation was accepted, the unlikely result would be that annexation would be allowed only when the entire annexed territory was surrounded by forest preserve, which in turn was surrounded by the village. *Id.*

34. *See In re Village of Wadsworth*, 154 Ill. App. 3d 54, 506 N.E.2d 677 (2d Dist. 1987) (when petitioners failed to file a proper affidavit with their petition but subsequently filed such affidavit, their action was not barred because the statute required only the submission of the affidavit prior to the hearing).

35. 146 Ill. App. 3d 979, 497 N.E.2d 319 (2d Dist. 1986), *appeal denied*, 113 Ill. 2d 586, 505 N.E.2d 363 (1986).

36. 146 Ill. App. 3d at 980, 497 N.E.2d at 319.

37. *Id.* at 980, 497 N.E.2d at 319-20.

not to the setting of annexation boundaries.³⁸ In response to this decision, however, the legislature amended the Illinois Municipal Code to authorize annexation boundary agreements between municipalities.³⁹

III. POLLUTION AND ENVIRONMENTAL ISSUES

Regulating potentially hazardous activities traditionally has been a governmental function. As the adverse effects of pollutants on the public health and the environment have become more obvious, however, the control of such pollutants has become more significant. The government has increasingly expanded its efforts to eliminate hazardous or unhealthy pollution.⁴⁰ During the *Survey* year, Illinois courts decided several cases in which they faced the challenge of balancing the sometimes contrary goals of protecting the environment and promoting the economic viability of certain technologies. In making such decisions, the courts often considered the extent to which the legislature has expressed its determination to enforce environmental protection measures.

In one such case, *City of Lake Forest v. PCB*,⁴¹ the Illinois Appellate Court for the Second District reviewed the authority of the Illinois Pollution Control Board (the "PCB") to regulate municipalities in the exercise of their powers. In that case, Lake Forest passed an ordinance that permitted leaf burning under specified conditions.⁴² The PCB subsequently issued a cease and desist order to the city, claiming that the ordinance violated the Environmental Protection Act (the "Act").⁴³ The practical effect of the PCB's order was to force Lake Forest to repeal its ordinance.⁴⁴ The court held that the PCB lacked the authority to proscribe the Lake Forest ordinance, because the legislature did not intend to delegate to the PCB the power to interfere in purely governmental

38. *Id.* at 881-82, 497 N.E.2d at 320-21; (citing ILL. REV. STAT. ch. 24 para. 11-12-9 (1985)).

39. See P.A. 85-0854, 1987 Ill. Legis. Serv. 85-854 (West).

40. An example of the state's expanding interest in reducing pollution is evident in the passage of Public Act 84-1445 by the legislature during the *Survey* year. ILL. REV. STAT. ch. 111 1/2, paras. 7201-7206 (West Supp. 1987). Under this law, the State of Illinois will indemnify from liability individuals engaged in certain "pollution response" activities, in order to encourage participation in programs to clean up, treat, and reclaim waste and other pollutants in the state.

41. 146 Ill. App. 3d 848, 497 N.E.2d 181 (2d Dist. 1986).

42. *Id.* at 849-50, 497 N.E.2d at 182.

43. *Id.* at 850, 497 N.E.2d at 182. Specifically, the PCB alleged that Lake Forest violated sections 9(a) and 9(c) of the Act. ILL. REV. STAT. ch. 111 1/2, paras. 1009(a),(c) (1985).

44. *City of Lake Forest*, 146 Ill. App. 3d at 853, 497 N.E.2d at 184-85.

matters.⁴⁵

In addition to issues concerning the scope of environmental agency powers, courts also were faced with interpreting statutory restrictions on the issuance of landfill expansion permits. In *M.I.G. Investments, Inc. v. EPA*,⁴⁶ owners of a landfill requested a supplemental permit to increase the maximum elevation of its existing landfill site.⁴⁷ The Illinois Environmental Protection Agency (the "EPA") denied the permit, observing that local approval was a prerequisite for a "new regional pollution control facility."⁴⁸

On appeal, the petitioners argued that the statute defining "new regional pollution control facility" contemplated only lateral, not vertical expansion.⁴⁹ Accordingly, they asserted that the proposed vertical expansion would not expand the boundaries of the landfill and, therefore, did not require local approval.⁵⁰ The Illinois Appellate Court for the Second District agreed, stating that the statutory terms "area" and "boundary" refer only to lateral expansion, and, according to the court, the local approval process did not apply to vertical expansions.⁵¹

The *M.I.G.* decision should not be interpreted to disfavor all local input in environmental matters. Rather, it merely limits the local authority to impose environmental controls to areas that traditionally are governed by localities or that are not inconsistent with statutory enactments.⁵²

The courts occasionally allot considerable deference to local approval of landfills. In *McHenry County Landfill, Inc. v. EPA*,⁵³ the Illinois Appellate Court for the Second District held that a county serving as the local siting authority may demand stricter precau-

45. *Id.* at 854, 497 N.E.2d at 184.

46. 151 Ill. App. 3d 488, 502 N.E.2d 1042 (2d Dist. 1986), *appeal allowed*, 115 Ill. 2d 543, 511 N.E.2d 430 (1987).

47. 151 Ill. App. 3d at 489, 502 N.E.2d at 1043.

48. *Id.* at 490-91, 502 N.E.2d at 1043.

49. *Id.* at 493, 502 N.E.2d at 1045.

50. *Id.* (citing ILL. REV. STAT. ch. 111 1/2, para. 1003(x)(2) (1985)).

51. *Id.* at 493-95, 502 N.E.2d at 1045-47.

52. The regulation of pollutants by a county is allowed when it complements the state scheme. In *County of Cook v. Chicago Magnet Wire Corp.*, 152 Ill. App. 3d 726, 504 N.E.2d 904 (1st Dist. 1987), *appeal denied*, 115 Ill. 2d 539, 511 N.E.2d 426 (1987), an anti-odor ordinance was upheld when it was found not to be preempted by state legislation and consistent with the county's traditional role in regulating nuisances. *Id.* at 731, 504 N.E.2d at 907-08. *But see* *Pesticide Pub. Policy Found. v. Village of Wauconda*, 117 Ill. 2d 107, 510 N.E.2d 858 (1987) (pesticide control ordinance by a local unit was preempted by a thorough federal and state scheme of regulation that left no room for further local regulation.).

53. 154 Ill. App. 3d 89, 506 N.E.2d 372 (2d Dist. 1987), *appeal denied*, 115 Ill. 2d 543, 511 N.E.2d 430 (1987).

tions and more advanced technologies in the development of a landfill than those mandated by the EPA, provided that these local standards are reasonable.⁵⁴ In addition, the court rejected the landfill owners' procedural challenge to the county's denial of local site approval by holding that the twenty-one-day pre-hearing notice for a local site hearing was not absolutely required or strictly jurisdictional.⁵⁵ Accordingly, because there was no prejudice from providing only twenty days' notice before the hearing, the hearing was found to be valid.⁵⁶ Finally, the court found that the objectors to the landfill lacked standing to participate in the appeal because they were neither parties at the hearing, nor adversely affected by the denial of local siting approval at such hearing.⁵⁷

In several other cases during the *Survey* period, courts continued to give greater definition to the authority and role of the PCB in promulgating and enforcing environmental regulations. First, the Illinois Supreme Court decided that the PCB's power to create regulations for special classes of activities did not restrict its discretionary power to promulgate individual, site-specific standards.⁵⁸ In another case, the Illinois Appellate Court for the Third District required the PCB to adopt a "common sense" approach in enforcing its orders when immediate enforcement of existing regulations would cause severe economic harm to a party who was awaiting approval of less stringent regulations.⁵⁹ In yet another case, the Illinois Appellate Court for the Fourth District determined that fines for pollution violations were a means of enforcement, rather than penalties. Therefore, these fines should not be imposed in arbitrarily excessive amounts when the violator has acted in good faith.⁶⁰

54. 154 Ill. App. 3d at 100-01, 506 N.E.2d at 380-81.

55. *Id.* at 95-97, 506 N.E.2d at 377-78.

56. *Id.*

57. *Id.* at 94, 506 N.E.2d at 376.

58. The Supreme Court held, in *Central Illinois Pub. Serv. Co. v. PCB*, 116 Ill. 2d 397, 507 N.E.2d 819 (1987), that the enactment by the legislature of section 28.1 of the Environmental Protection Act did not restrict, eliminate, or abrogate the ability of the agency to develop site-specific standards under section 27. *Id.* at 406, 507 N.E.2d at 822-23. See ILL. REV. STAT. ch. 111 1/2, paras. 1027, 1028.1 (1985). The new section 28.1 was seen as an additional tool for the PCB, not a rein on its other powers. *Central Illinois*, 116 Ill. 2d at 405, 507 N.E.2d at 822.

59. See *Citizens Utilities Co. v. PCB*, 152 Ill. App. 3d 122, 504 N.E.2d 224 (3d Dist. 1987) (petitioner was allowed to delay compliance with certain environmental standards pending a re-evaluation of such standards when the revised standard could save the petitioner millions of dollars).

60. In *Archer Daniels Midland v. PCB*, 149 Ill. App. 3d 301, 500 N.E.2d 580 (4th Dist. 1986), a fine assessed by the PCB was rejected for being arbitrary and excessive. *Id.* at 306, 500 N.E.2d at 583. The violator in that case had demonstrated good faith in

In addition to giving fuller definition to the authority and role of the PCB, the courts also considered procedural matters concerning the granting or denial of permits. First, one court made clear that only by following proper procedures can a petitioner be heard on appeal. Thus, petitioners wishing to appeal the denial of a permit must first seek administrative review before the PCB and then may appeal directly to the state appellate court. Review in the circuit court is not an option.⁶¹ In another case, the Illinois Supreme Court ruled that the PCB was correct in conducting a hearing to review the denial of a permit by the EPA; furthermore, the PCB's reversal of the EPA's action was proper.⁶²

In sum, the courts were especially mindful of clearly defining the powers and roles of environmental agencies yet required petitioners to adhere strictly to established procedures. In doing so, courts have been sensitive to the need for applying and enforcing the standards of the Environmental Protection Act in a practical way. Yet, practical convenience has not been used as an excuse for ignoring the provisions of the Act or for excusing duties established on persons under common law.⁶³

IV. GOVERNMENTAL LIABILITY AND IMMUNITY

Despite twenty-three years since the enactment of the Local Governmental and Governmental Employees Tort Immunity Act (the "Act"), claimants, local governments, and courts still struggle to define its reaches.⁶⁴ During the *Survey* year, this struggle continued, both in terms of the procedural and substantive provisions of the Act. The legislature revised the Act in order to mitigate the effects that the "insurance crisis" may have on local governments.⁶⁵ This *Survey* section will review the efforts of the courts to

spending over \$4.5 million to solve the discharge problems. *Id.* at 303, 500 N.E.2d at 582.

61. *Inland Steel Mortgage Acceptance Corp. v. Carlson*, 154 Ill. App. 3d 890, 895, 898, 507 N.E.2d 213, 216-17 (2d Dist. 1987).

62. *EPA v. PCB*, 115 Ill. 2d 65, 68-69, 503 N.E.2d 343, 345 (1986). In this case, the Illinois Supreme Court also ruled that in this situation the PCB is not required to apply the "manifest weight" test required for reviewing EPA orders under ILL. REV. STAT. ch. 111 1/2, para. 1039.2 (1985). *Id.* at 69-70, 503 N.E.2d at 345.

63. *See, e.g., Village of Forrest v. Norfolk & Western Ry.*, 146 Ill. App. 3d 20, 29-30, 496 N.E.2d 257, 263 (4th Dist. 1986) (railroad was ordered to abate a nuisance it had created by blocking off a drainage ditch that a village had used for many years to alleviate flooding problems).

64. ILL. REV. STAT. ch. 85, paras. 1-101 to 10-101 (1985).

65. These revisions are found in P.A. 84-1431, 1986 Ill. Legis. Serv. 84-1431 (West), effective Nov. 26, 1986 and ILL. REV. STAT. ch. 85, paras. 1-101.1 - 9-107 (West Supp. 1986).

clarify the limits of governmental exposure to tort liability under the Act.

A. Notice and Other Statutory Requirements

Section 8-102 of the Act required that a claimant against a governmental body serve written notice upon the body within one year after the injury or cause of action.⁶⁶ Failure to meet the deadline precluded further action.⁶⁷ Illinois courts interpreted this section of the Act several times during the *Survey* period in deciding whether sufficient notice had been served.

In *Lane v. Chicago Housing Authority*,⁶⁸ the Illinois Appellate Court for the First District held that a cause of action against the Chicago Housing Authority (the "CHA") was barred when no written notice was served upon the CHA within the one-year period.⁶⁹ Because actual notice is required, mere filing of the complaint, as opposed to service, within the year was insufficient.⁷⁰

In *Lane*, the injury occurred on April 11, 1984, but no written notice was served upon the CHA.⁷¹ Although the claimant filed his complaint on April 8, 1985, before the deadline expired, actual service of the summons and complaint did not occur until after the one-year period, on April 12.⁷² Thus, the failure to provide the CHA with a timely notice of the claim or complaint barred the claimant from seeking damages.⁷³

Each element required by section 8-102 had to be included in the statutory notice.⁷⁴ Therefore, in *Grady v. Bi-State Development Agency*,⁷⁵ the Illinois Appellate Court for the Fifth District dis-

66. ILL. REV. STAT. ch. 85, para. 8-102 (1985) (repealed 1986).

67. *Id.*

68. 147 Ill. App. 3d 876, 498 N.E.2d 604 (1st Dist. 1986), *appeal denied*, 113 Ill. 2d 576, 505 N.E.2d 354 (1986).

69. 147 Ill. App. 3d at 880, 498 N.E.2d at 607.

70. *Id.*

71. *Id.* at 876, 880, 498 N.E.2d at 604, 606.

72. *Id.* at 876-77, 498 N.E.2d at 604.

73. *Id.* at 879-80, 498 N.E.2d at 607.

74. For example, the court found the notice insufficient in *Carroll v. Chicago Housing Authority*, 155 Ill. App. 3d 710, 508 N.E.2d 285 (1st Dist. 1987), when the plaintiff specified neither the injury suffered nor the negligent act or omission by the CHA within the statutory period. *Id.* at 713, 508 N.E.2d at 286. *But see* *Whitney v. Chicago*, 155 Ill. App. 3d 714, 508 N.E.2d 293 (1st Dist. 1987), in which plaintiffs were allowed to amend their erroneous original complaint after the deadline had passed, because the court held that the notice requirement of the Act should be construed liberally. *Id.* at 717, 508 N.E.2d at 296. The holding further stated that the Act required the written notice merely to set forth the general nature of the accident as opposed to the detailed information the defendants sought to demand. *Id.*

75. 151 Ill. App. 3d 748, 502 N.E.2d 1087 (5th Dist. 1986).

missed a claim against a public agency because the notice lacked information required by section 8-102.⁷⁶ The claimant's address, the approximate time of the accident, the general nature of the accident, and the name and address of any attending physician or treating hospital were omitted.⁷⁷ The claim was barred in order to protect the local public entity from being misled by the incomplete notice.⁷⁸

Although courts required substantial compliance with section 8-102 of the Act, the notice requirements did not apply to some tort actions against governmental bodies. The court considered such an exception in *Leckrone v. City of Salem*.⁷⁹ In *Leckrone*, the Illinois Appellate Court for the Fifth District held that the notice section of the Act does not apply in an injunctive action against a governmental entity because an injunction is a relief other than damages.⁸⁰ Additionally, the two-year statute of limitations in the Act is not a bar against an injury that is ongoing; each recurring event creates a new cause of action prompting the statutory period to begin running anew.⁸¹

During the *Survey* period, the courts also examined other provisions of the Act that removed the protection of general immunity for certain government torts. One of these torts, wrongful demolition,⁸² was at issue in *Hapeniewski v. City of Chicago Heights*.⁸³ In *Hapeniewski*, a building owner brought an action against the city for wrongful demolition under section 1-4-7 of the Municipal Code.⁸⁴ The plaintiff argued that because section 2-101(e) precluded immunity from liability for wrongful demolition under the Act, the two-year statute of limitations imposed by the Act should not apply to such an action.⁸⁵ The court disagreed, observing that section 2-101(e) affected the substantive provisions of the Act, but

76. *Id.* at 751, 502 N.E.2d at 1089-90.

77. *Id.*

78. *Id.* at 751, 502 N.E.2d at 1090. In a dissenting opinion, Justice Welch criticized the result and contended that the plaintiff had complied sufficiently with section 8-102 to maintain her suit. *Id.* at 752-53, 502 N.E.2d at 1090-91 (Welch, J., dissenting).

79. 152 Ill. App. 3d 126, 503 N.E.2d 1093 (5th Dist. 1987).

80. *Id.* at 137, 503 N.E.2d at 1101.

81. *Id.* at 137-38, 503 N.E.2d at 1101.

82. *See also* *Turpen v. City of St. Francisville*, 145 Ill. App. 3d 891, 495 N.E.2d 1351 (5th Dist. 1986) (approval of the city council not necessary to hold city liable for wrongful demolition when mayor had authorized demolition in an emergency situation).

83. 147 Ill. App. 3d 528, 497 N.E.2d 97 (1st Dist. 1985), *cert. granted, vacated*, 108 S. Ct. 53 (1987).

84. *Id.* at 529, 497 N.E.2d at 98 (citing ILL. REV. STAT. ch. 24, para. 1-4-7 (1985)).

85. *Id.* at 530-31, 497 N.E.2d at 98-99 (citing ILL. REV. STAT. ch. 85, para. 2-101(e) (1985)).

not procedural matters such as the statute of limitations.⁸⁶ Therefore, the two-year statute of limitations applied, and the court dismissed the action for failure to comply with this procedural requirement.⁸⁷

B. Governmental Duties and Liabilities

A threshold question that must be addressed before considering the availability of immunity under the Act is whether a local governmental body had a duty that could give rise to tort liability. The Illinois legislature already has established in section 4-102 of the Act that municipalities do not have a duty to provide police protection to their citizens or, when such protection is provided, to meet any minimum level of service.⁸⁸ Likewise, pursuant to section 4-107 of the Act, a public employee is not liable for injuries caused by failure to make an arrest or to retain a person in custody.⁸⁹ The courts addressed these sections during the *Survey* year and analyzed their possible conflict with section 2-202 of the Act, which holds public entities and their employees liable for wilful and wanton conduct in the enforcement of any law.⁹⁰

In *Luber v. City of Highland*,⁹¹ the plaintiff claimed that a police officer, who had stopped an allegedly intoxicated traffic violator, negligently allowed the violator to continue driving.⁹² The driver subsequently was involved in an accident that caused serious injury to the plaintiff.⁹³ The Illinois Appellate Court for the Fifth District held that the officer was not liable because his conduct did not bring him within the traditionally applied special duty exception to nonliability.⁹⁴ Moreover, because sections 4-102 and 4-107 applied

86. *Id.* at 531, 497 N.E.2d at 99.

87. *Id.* at 533, 497 N.E.2d at 101.

88. ILL. REV. STAT. ch. 85, para. 4-102 (1985) (amended 1986). Additionally, government bodies are not liable for actions taken by off-duty employees in pursuit of personal goals. In *Wolf v. Liberis*, 153 Ill. App. 3d 488, 505 N.E.2d 1202 (1st Dist. 1987), *appeal denied*, 115 Ill. 2d 552, 511 N.E.2d 438 (1987), the city was not liable for the actions of an off-duty police officer who was not acting in an official capacity at the time he was involved in a collision. *Id.* at 492-93, 505 N.E.2d at 1206.

89. ILL. REV. STAT. ch. 85, para. 4-107 (1985).

90. ILL. REV. STAT. ch. 85, para. 2-202 (1985) (amended 1986).

91. 151 Ill. App. 3d 758, 502 N.E.2d 1243 (5th Dist. 1986), *appeal denied*, 114 Ill. 2d 547, 508 N.E.2d 729.

92. *Id.* at 759-60, 502 N.E.2d at 1244-45.

93. *Id.* at 760, 502 N.E.2d at 1244.

94. *Id.* at 762, 502 N.E.2d at 1246. The special duty exception was rejected by the courts in this context in *Hernandez v. Village of Cicero*, 151 Ill. App. 3d 170, 502 N.E.2d 1226 (1st Dist. 1986), and *Mallder v. Rasmussen*, 145 Ill. App. 3d 809, 495 N.E.2d 1356 (3d Dist. 1986), *appeal denied*, 112 Ill. 2d 577, ___ N.E.2d ___. The special duty exception depends upon a factually sensitive four-part test that creates a duty upon police officers

specifically to police activity, they were held to control over the more general provisions of section 2-202 relating to wilful and wanton conduct.⁹⁵ According to the *Luber* court, even if the officer's conduct had been wilful and wanton, no liability would result unless a plaintiff could establish that a special duty was owed to him.

The Illinois Appellate Court for the First District reached a different interpretation of these provisions in *Laco v. City of Chicago*.⁹⁶ In *Laco*, the court implied that police officers would lose the protection of section 4-102 if their actions or omissions were wilful or wanton under section 2-202.⁹⁷ The officers had been involved in an automobile pursuit and were judged not to have acted wilfully or wantonly, and thus liability was not established.⁹⁸ Nevertheless, the *Laco* decision indicates that if there had been wilful or wanton conduct by the officers, section 2-202 would negate the effects of sections 4-102 and 4-107.⁹⁹ In another case, involving the application of section 2-102 of the Act,¹⁰⁰ the Illinois Supreme Court interpreted section 2-102 literally and held that a transit district was completely immune from punitive damages.¹⁰¹

C. *The Effect of Other Tort-Related Statutes*

During the *Survey* period, Illinois courts also interpreted other statutes that relate to a local government's liability for damages in tort. In so doing, they reconciled apparently contradictory policies of the state that are expressed in the Contribution Among Joint Tortfeasors Act (the "Contribution Act")¹⁰² on the one hand, and the establishment of the Illinois Court of Claims on the other

only when each element of the test is found to be present. *Luber*, 151 Ill. App. 3d at 762, 502 N.E.2d at 1246.

95. *Luber*, 151 Ill. App. 3d at 763, 502 N.E.2d at 1246 (citing ILL. REV. STAT. ch. 85, paras. 4-102, 4-107 (1985) (amended 1986)).

96. 154 Ill. App. 3d 498, 507 N.E.2d 64 (1st Dist. 1987).

97. *Id.* at 509, 507 N.E.2d at 70-71.

98. *Id.* at 504-05, 507 N.E.2d at 68.

99. The court did not decide this precise issue, which might explain its questionable rationale. Under traditional tort law, no conduct, regardless of its nature or degree, can create liability in the absence of a legal duty. Sections 4-102 and 4-107 are determinative on the question of duty. ILL. REV. STAT. ch. 85, paras. 4-102, 4-107 (1985) (amended 1986).

100. ILL. REV. STAT. ch. 85, para. 2-102 (1985 & West Supp. 1986).

101. *Boyles v. Greater Peoria Mass Transit District*, 113 Ill. 2d 545, 499 N.E.2d 435 (1986). In this case, a public employee who was dismissed from her job filed an action for retaliatory discharge, a remedy that included punitive damages. *Id.* at 547, 499 N.E.2d at 435. Even though punitive damages were an important element of this tort, the Act still precluded their recovery. *Id.* at 553-54, 499 N.E.2d at 438.

102. ILL. REV. STAT. ch. 70, paras. 301 to 305 (1985 & West Supp. 1986).

hand.¹⁰³

The Contribution Act requires a party seeking contribution to assert a counterclaim or third-party action at the time the action is pending; otherwise the party forfeits any contribution claim.¹⁰⁴ Consequently, an action brought against a unit of local government in a circuit court of Illinois would prevent the locality from obtaining any contribution claim against the state as a joint tortfeasor.¹⁰⁵

The obvious inequity of this result caused the Illinois Appellate Court for the Fifth District to create an exception to the Contribution Act in the case of *Welch v. Stocks*.¹⁰⁶ In *Welch*, county officials were sued in circuit court for negligence concerning a lack of adequate traffic signs at a collision site.¹⁰⁷ These officials then filed a third-party complaint against the state, which was dismissed for lack of jurisdiction.¹⁰⁸ The appellate court held that actions against the state were an exception to the ban on separate actions for contribution. Although local officials could not maintain their third-party complaint in the circuit court, they successfully could initiate a separate action for contribution against the state in the Court of Claims.¹⁰⁹

Another tort-related statute, the Road Construction Injuries Act (the "RCIA"),¹¹⁰ was interpreted and given further definition by Illinois courts during the *Survey* period. The RCIA is a safety statute designed to protect workers and the public from injuries arising from road construction on bridges and highways. Its applicability to municipalities was considered for the first time by the courts in

103. ILL. REV. STAT. ch. 127, para. 801 (1985); ILL. REV. STAT. ch. 37, para. 439.8 (1985) (Court of Claims has exclusive jurisdiction to hear claims against the State). Claims against employees of the state who are acting in their official capacities and state agencies will be treated for purposes of the statute as actions against the state, and the Court of Claims possesses exclusive jurisdiction of these claims. See *Byron v. Village of Lyons*, 148 Ill. App. 3d 1057, 500 N.E.2d 499 (1st Dist. 1986) (action against Department of Children and Family Services), and *Robb v. Sutton*, 147 Ill. App. 3d 710, 498 N.E.2d 267 (4th Dist. 1986) (action against assistant dean of state university acting in official capacity).

104. See *Laue v. Leifheit*, 105 Ill. 2d 191, 473 N.E.2d 939 (1984).

105. See *Byron*, 148 Ill. App. 3d 1057, 500 N.E.2d 499 (third-party contribution claims against State dismissed because circuit court lacked subject matter jurisdiction).

106. 152 Ill. App. 3d 1, 503 N.E.2d 1079 (5th Dist. 1987), *appeal denied*, 114 Ill. 2d 559, 508 N.E.2d 737 (1987).

107. 152 Ill. App. 3d at 2, 503 N.E.2d at 1080.

108. *Id.* at 3, 503 N.E.2d at 1080.

109. *Id.* at 4-5, 503 N.E.2d at 1081.

110. ILL. REV. STAT. ch. 121, paras. 314.1 - 314.8 (1985).

Thoman v. Village of Northbrook.¹¹¹ In *Thoman*, the plaintiff's automobile collided with the vehicle of a village employee making road repairs.¹¹² The motorist sued the employee and the village for negligence and under the provisions of the RCIA.¹¹³ The plaintiff argued that the exemptions in section 8 of the RCIA applied only to public employees, and not to the governmental entities that employ them.¹¹⁴ The court disagreed, holding that section 8 should be construed to apply to public agencies as well as their employees.¹¹⁵ The court reasoned that the legislative intent behind the RCIA was to impose liability only on contractors, subcontractors, and their agents, not governmental bodies.¹¹⁶

D. Additional Government Tort Issues

In addition to confronting issues regarding governmental liability under Illinois statutes, the courts addressed a variety of other issues relating to governmental tort liability during the *Survey* period. First, courts reaffirmed that public entities owe no duty to provide public access ways.¹¹⁷ Second, the courts considered questions relating to governmental liability when insurance has been purchased by a public entity. Municipalities must notify their insurance carriers in accordance with the terms of their insurance contracts, just like any other insured.¹¹⁸

Although the purchase of insurance eliminates many of the protections against tort liability that a local government is given, it does not increase the post-judgment interest rate that a public entity must pay. In a case of first impression, *LaSalle National Bank*

111. 148 Ill. App. 3d 356, 499 N.E.2d 507 (1st Dist. 1986), *appeal denied*, 113 Ill. 2d 585, 505 N.E.2d 363 (1987).

112. *Id.* at 357, 499 N.E.2d at 508.

113. *Id.*

114. *Id.* at 357-58, 499 N.E.2d at 508.

115. *Id.* at 358, 499 N.E.2d at 509. This holding was followed in *Butts v. City of Peoria*, 152 Ill. App. 3d 382, 504 N.E.2d 544 (3d Dist. 1987), *appeal denied*, 115 Ill. 2d 539, 511 N.E.2d 426 (1987) (action by motorcyclist against city under RCIA dismissed as city exempt from this statute).

116. *Thoman*, 148 Ill. App. 3d at 358, 499 N.E.2d at 509.

117. See *Frakes v. Martin*, 151 Ill. App. 3d 676, 503 N.E.2d 556 (3d Dist. 1987), *appeal denied*, 115 Ill. 2d 540, 511 N.E.2d 428 (1987); *Nicholson v. City of Danville*, 147 Ill. App. 3d 682, 498 N.E.2d 273 (4th Dist. 1986) (no duty to provide sidewalks). *But see* *Burris v. Madison County*, 154 Ill. App. 3d 1064, 507 N.E.2d 1267 (5th Dist. 1987); *Highland v. Stevenson*, 153 Ill. App. 3d 390, 505 N.E.2d 776 (3d Dist. 1987) (duty to maintain public ways).

118. See *Village of Lake in the Hills v. Illinois Emcasco Ins. Co.*, 153 Ill. App. 3d 815, 506 N.E.2d 681 (2d Dist. 1987) (village must honor requirements of insurance contract to give written notice of claim to company and institute litigation within one year of occurrence).

v. *City of Chicago*,¹¹⁹ the Illinois Appellate Court for the First District considered a successful plaintiff's request to obtain post-judgment interest at a rate of nine percent rather than the usual six percent-rate assessable against government bodies.¹²⁰ The plaintiffs argued that because the city was insured, the private insurance company will be paying the interest, and thus the higher rate assessed against private parties should apply.¹²¹ The court rejected this argument, reasoning that if the insurance company were forced to pay higher interest, it would react by raising the city's premiums, which would deplete the public coffers.¹²² The legislature established the lower interest rate to preserve government funds; the plaintiff's proposed alternative therefore could not be allowed because it would indirectly deplete public resources.¹²³

V. ELECTION LAW AND PUBLIC OFFICIALS

A. Election Law

During the *Survey* year, a number of issues arose concerning the election process. These issues covered a wide range of topics, including nomination, campaigning, and the wording of the ballot itself. In each of these cases, the courts demanded that statutory procedures be followed strictly.¹²⁴

In *In re Village of Maywood*,¹²⁵ a petition to change the form of government in that village was rejected for failure to include all the information required by statute.¹²⁶ The petitioners sought to change the form of government from the managerial form to the "strong mayor" type.¹²⁷ Although the petition asked whether the form of government should be changed to this new form, it did not provide for an abandonment of the old form as was required by

119. 154 Ill. App. 3d 456, 506 N.E.2d 1326 (1st Dist. 1987), *appeal denied*, 116 Ill. 2d 560, 515 N.E.2d 110 (1987).

120. *Id.* at 461, 506 N.E.2d at 1329.

121. *Id.*

122. *Id.* at 468, 506 N.E.2d at 1334.

123. *Id.*

124. An example of the courts' strict demands for proper procedure is found in *In re Petition to Call an Election*, 148 Ill. App. 3d 436, 499 N.E.2d 129 (2d Dist. 1986). In that case, the court ruled that before any further proceedings could be held on a petition to incorporate a village, the county board must make certain determinations as was required by the county's own resolution governing incorporation elections. *Id.* at 438, 499 N.E.2d at 131.

125. 154 Ill. App. 3d 754, 507 N.E.2d 151 (1st Dist. 1987).

126. *Id.* at 760, 507 N.E.2d at 155.

127. *Id.* at 755, 507 N.E.2d at 152.

statute.¹²⁸ The court ruled that, although the question of abandonment need not appear on the same ballot as the question to adopt the "strong mayor" form, it must nevertheless be submitted to the citizens.¹²⁹

Courts have also required objectors to follow the statutory procedure in an equally rigorous manner. In *Keating v. Iozzo*,¹³⁰ a case of first impression in Illinois, the court held that an objector would not receive a deadline extension to file his objections.¹³¹ The village clerk notified the objector that she would be in her office for only approximately ninety minutes on the last day for filing objections.¹³² Because the objector had received notice of this fact and no evidence suggested a lack of opportunity to file before the deadline, an extension of the deadline was denied.¹³³

Strict compliance with statutory procedures similarly is required when the actual question presented on the ballot is at issue. In *Lipinski v. Chicago Board of Election Commissioners*,¹³⁴ the petitioners sought to include a referendum for a nonpartisan election on an upcoming ballot.¹³⁵ The Illinois Supreme Court rejected the referendum as being too vague and ambiguous.¹³⁶ The court ruled that a binding referendum must be complete on its face and self-executing, leaving no unaddressed matters for the legislature to resolve in order to function.¹³⁷ In contrast, when the statute itself specifies that it should be construed liberally, petitioners are not required to adhere as closely to procedure.¹³⁸

128. *Id.* at 759, 507 N.E.2d at 154; ILL. REV. STAT. ch. 24, para. 5-5-1 (1985).

129. 154 Ill. App. 3d at 760, 507 N.E.2d at 155.

130. 155 Ill. App. 3d 774, 508 N.E.2d 503 (2d Dist. 1987).

131. *Id.* at 777, 781, 508 N.E.2d at 505, 508.

132. *Id.* at 775, 508 N.E.2d at 504.

133. *Id.* at 778-79, 781, 508 N.E.2d at 506-08.

134. 114 Ill. 2d 95, 500 N.E.2d 39 (1986).

135. *Id.* at 97, 500 N.E.2d at 40.

136. *Id.* at 100, 500 N.E.2d at 43. The referendum read:

Shall the mayor, the treasurer, and the clerk of the City of Chicago be elected on a non-partisan ballot, by at least a 50% majority vote, but if no candidate receives at least 50% of the votes cast for the respective office, then in a run-off election between the two candidates for the office who received the greatest number of votes for that office at the initial election?

The court noted that among other deficiencies, the proposed referendum did not specify to what election it would first apply, and was ambiguous on its face by including the oxymoron "50% majority vote." *Id.* at 100, 103, 500 N.E.2d at 42-43.

137. *Id.* at 99-100, 500 N.E.2d at 41-42.

138. The Illinois Liquor Control Act (the "Liquor Act"), ILL. REV. STAT. ch. 43, paras. 93.9 - 195 (1985), specifically paragraph 169, was interpreted in this regard in *Quarles v. Kozubowski*, 154 Ill. App. 3d 325, 507 N.E.2d 103 (1st Dist. 1987). In *Quarles*, local residents wished to vote their precinct "dry," banning the retail sale of liquor. *Id.* at 328, 507 N.E.2d at 105. Although their petition was deficient in some

The courts also have determined that they will not penalize proponents of a referendum for using specific statutory wording on the ballot, even though the language itself did not fully explain the question presented to voters. In *Lunde v. Rockford Public Library Board*,¹³⁹ the Illinois Appellate Court for the Second District allowed the Rockford Public Library Board (the "board") to use funds raised for "maintenance and operation" of the library for structural changes and remodeling of the building.¹⁴⁰ Even though these repairs were not strictly maintenance and operation, the exact wording of the referendum to increase library taxes was mandated by state law, and the board could not have clarified the ways it intended to spend the revenue even if it so desired.¹⁴¹ Therefore, the board did not suffer for faithfully adhering to statutory constraints.¹⁴²

B. Public Officials

During the *Survey* period, the courts also addressed several issues concerning the authority and obligations of public officials. The question of internal procedure in the actions of a city council arose in *Roti v. Washington*.¹⁴³ In *Roti*, the Illinois Appellate Court for the First District held that a simple majority of fifty-one percent of the city council possessed sufficient legislative power to repeal an earlier amendment requiring a supermajority two-thirds vote to remove committee chairmen.¹⁴⁴ Because this issue had not been addressed previously in Illinois, the court followed similar cases in other jurisdictions and held that "the power to make carries with it the right and power to unmake."¹⁴⁵ The court stressed also that state law supersedes local law, and thus the mayor possesses the power to break a tie vote.¹⁴⁶

Furthermore, a potential appointee to public office cannot claim such position unless the proper nominating procedure is followed.

respects, the court held that because that Liquor Act itself provides that its requirements should be construed liberally, the absence of this information was not fatal to the petition. *Id.* at 332-33, 507 N.E.2d at 107-08 (citing ILL. REV. STAT. ch. 43, para. 94 (1985)).

139. 153 Ill. App. 3d 803, 506 N.E.2d 385 (2d Dist. 1987).

140. *Id.* at 809-10, 506 N.E.2d at 389.

141. *Id.* at 807-08, 506 N.E.2d at 388.

142. *Id.* at 808, 506 N.E.2d at 389.

143. 148 Ill. App. 3d 1006, 500 N.E.2d 463 (1st Dist. 1986).

144. *Id.* at 1012, 500 N.E.2d at 468.

145. *Id.* at 1012, 500 N.E.2d at 467 (quoting *State ex. rel. Kiel v. Riechmann*, 239 Mo. 81, 142 S.W. 304 (1911)).

146. *Id.* at 1013, 500 N.E.2d at 468.

In *Spicer v. City of Chicago*,¹⁴⁷ the Illinois Appellate Court for the First District held that when the mayor had withdrawn his nomination of a candidate for purchasing agent, the subsequent approval of that nominee by the city council was a nullity.¹⁴⁸ The mayor's withdrawal of his nominee terminated further action on the matter.¹⁴⁹ Of course, even when public officials are elected properly or appointed to office, other limitations may affect their ability to hold such office.¹⁵⁰

The rights of parties and candidates to choose the best manner by which to nominate and campaign, without infringing on statutory and other restrictions, were also considered by the courts in several cases decided during the *Survey* period. In *People v. White*,¹⁵¹ the Illinois Supreme Court struck down as unconstitutional on its face a statute that required the names and addresses of all publishers and circulators of political pamphlets to be printed on those pamphlets.¹⁵² In *White*, the defendant distributed a pamphlet calling for the removal from office of the incumbent, and his replacement with another.¹⁵³ The flyer did not include the defendant's name and address in violation of a statute that made the anonymous printing and circulation of such pamphlets a misdemeanor.¹⁵⁴ The Illinois Supreme Court found that this restriction violated the first amendment, especially in light of the historical importance of anonymous political speech, the lack of a compelling state interest for the restriction, and the reduction of information to the citizenry that would result if the statute were upheld.¹⁵⁵

Another statutory restriction on campaigning was interpreted

147. 149 Ill. App. 3d 68, 500 N.E.2d 633 (1st Dist. 1986).

148. *Id.* at 71, 500 N.E.2d at 635.

149. *Id.*

150. For example, an official holding two or more incompatible offices must relinquish such positions in order to eliminate the incompatibility. See *Teros v. Verbeck*, 155 Ill. App. 3d 81, 506 N.E.2d 464 (3d Dist. 1987), *dismissed*, 115 Ill. 2d 550, 511 N.E.2d 436 (1987) (defendant not allowed to occupy position on County Board while serving as deputy county coroner, because he could influence the budget and salaries of the coroner's office). Similarly, a potential public official may be prevented from taking office because of the terms of a binding agreement. See *Dineen v. City of Chicago*, 152 Ill. App. 3d 90, 504 N.E.2d 144 (1st Dist. 1987), *appeal allowed*, 115 Ill. 2d 540, 511 N.E.2d 427 (1987) (provision of collective bargaining agreement between city and police union requiring officers take unpaid leave of absence while running for office upheld).

151. 116 Ill. 2d 171, 506 N.E.2d 1284 (1987).

152. *Id.* at 183, 506 N.E.2d at 1290.

153. *Id.* at 172-73, 506 N.E.2d at 1285.

154. ILL. REV. STAT. ch. 46, para. 29-14 (1985). See also *White*, 116 Ill. 2d at 173-74, 506 N.E.2d at 1285.

155. *White*, 116 Ill. 2d at 176-77, 179-80, 183, 506 N.E.2d at 1286, 1288, 1290.

and clarified in *McGuire v. Nogaj*.¹⁵⁶ In *McGuire*, the Illinois Appellate Court for the First District held that section 10-4 of the Election Code¹⁵⁷ does not bar a person from circulating nominating petitions for more than one candidate for the same office when the candidates are both independents.¹⁵⁸ The statute forbids only such dual circulation when one of the candidates for office is a member of a political party.¹⁵⁹ Thus, a circulator may carry petitions for two independent candidates for the same office.

Finally, the authority of a political party's central committee to delegate to a special committee its powers to fill nomination vacancies was upheld in *Allen v. Electoral Board of Saint Clair County*.¹⁶⁰ The court held that the central committee may remove voting authority from its membership and place that authority in a smaller group under proper circumstances.¹⁶¹

VI. PROPERTY RIGHTS AND REGULATIONS

A. Land Use and Zoning

During the *Survey* period, Illinois courts continued to define the zoning powers of local governments. The courts have confirmed that local zoning decisions are presumed valid unless they bear no substantial relationship to the goal of promoting public health, safety, and welfare.¹⁶² The presumption disappears when there is no substantial relationship between the restriction imposed and the purported purpose of the restriction. In *City of Chicago v. Gordon*,¹⁶³ a city ordinance banning the display of certain types of outdoor advertising in residential neighborhoods was held unconstitutional.¹⁶⁴ The defendants, real estate agents and brokers, had been issued citations for erecting "for sale" and "open house" signs

156. 146 Ill. App. 3d 280, 496 N.E.2d 1037 (1st Dist. 1986).

157. ILL. REV. STAT. ch. 46, para. 10-4 (1985).

158. *McGuire*, 146 Ill. App. 3d at 283, 496 N.E.2d at 1040.

159. *Id.* at 283, 496 N.E.2d at 1039-40.

160. 147 Ill. App. 3d 782, 498 N.E.2d 878 (5th Dist. 1986), *appeal denied*, 113 Ill. 2d 571, 505 N.E.2d 350 (1987).

161. *Id.* at 785-86, 498 N.E.2d at 880. Of particular interest, the court held that the weighted voting mandated by statute was not effected, as the vote had been unanimous. *Id.* at 786, 498 N.E.2d at 880.

162. See *Knor v. County of Madison*, 151 Ill. App. 3d 767, 502 N.E.2d 1063 (5th Dist. 1987), *appeal denied*, 114 Ill. 2d 547, 508 N.E.2d 729 (1987) (special use permit for a gun club found valid); *LaSalle Nat'l Bank v. Village of Bloomingdale*, 154 Ill. App. 3d 918, 507 N.E.2d 517 (2d Dist. 1987) (denial of commercial development in residential area proper); *York v. Village of Wilmette*, 148 Ill. App. 3d 108, 498 N.E.2d 712 (1st Dist. 1986) (special use permit for home for the elderly upheld).

163. 146 Ill. App. 3d 898, 497 N.E.2d 442 (1st Dist. 1986).

164. *Id.* at 905, 497 N.E.2d at 447.

in these areas.¹⁶⁵ The city claimed that the purpose of the ordinance was to prevent distractions which might impair traffic safety, as well as to enhance the aesthetic quality of residential areas.¹⁶⁶ Because the city permitted many other distractions to continue, the Illinois Appellate Court for the First District saw no direct relationship between the ordinance and its nominal aims.¹⁶⁷ The court surmised that the real goal of the ordinance was to avoid panic selling and "white flight."¹⁶⁸ Finding no substantial relationship between the ordinance and a legitimate governmental goal, the court declared the ordinance invalid.¹⁶⁹

A reasonable relation between the action taken and the legitimate goal sought is not the only requirement for a valid zoning ordinance. In *Zebulon Enterprises v. County of DuPage*,¹⁷⁰ the Illinois Appellate Court for the Second District held that a special use ordinance also must contain sufficiently narrow, objective, and definite standards in order to avoid arbitrary denials of special use permits.¹⁷¹ In *Zebulon*, the plaintiff owned an adult book store and operated "mini-theaters" on the premises.¹⁷² The "mini-theaters" constituted amusements requiring a special use permit under the ordinance.¹⁷³ After reviewing the ordinance, the court found that it lacked sufficient standards for evaluating an application for a special use permit and, therefore, left open the possibility of discrimination by selective enforcement.¹⁷⁴ Although the ordinance had been found valid when applied to the regulation of economic interests, it left too much discretion in the hands of local authorities when first amendment interests were at stake.¹⁷⁵ Accordingly, the ordinance was declared unconstitutional as it applied to plaintiff's "mini-theaters."¹⁷⁶ Even when the first amendment is not involved, however, an ordinance must be sufficiently clear for an ordinary person to understand its meaning.¹⁷⁷

165. *Id.* at 900, 497 N.E.2d at 444.

166. *Id.* at 903, 497 N.E.2d at 445-46.

167. *Id.* at 903-04, 497 N.E.2d at 446-47.

168. *Id.*

169. *Id.* at 905, 497 N.E.2d at 447.

170. 146 Ill. App. 3d 515, 496 N.E.2d 1256 (2d Dist. 1986).

171. *Id.* at 522-23, 496 N.E.2d at 1261.

172. *Id.* at 517-18, 496 N.E.2d at 1257-58.

173. *Id.*

174. *Id.* at 522, 496 N.E.2d at 1261.

175. *Id.* at 523, 496 N.E.2d at 1261.

176. *Id.*

177. *See also* *Union Nat'l Bank & Trust Co. of Joliet v. New Lenox*, 152 Ill. App. 3d 919, 505 N.E.2d 1 (3d Dist. 1987) (special use permit ordinance found unconstitutional).

B. Privileges

Although the courts are careful to prevent unfettered local discretion in regulating first amendment rights through land use restrictions, the judiciary nevertheless recognized a need for some discretion even when the first amendment may be implicated. In *Foster & Kleiser v. City of Chicago*,¹⁷⁸ a city landmark ordinance prohibited the issuance of any permit to erect signs adjacent to an official landmark.¹⁷⁹ The plaintiffs erected signs on public property pursuant to permits that were erroneously issued in violation of the landmark ordinance.¹⁸⁰ The court upheld the constitutionality of the ordinance, finding that it was content-neutral and that its standards of prohibiting signs "immediately adjacent" to designated landmarks was closely related to the legitimate governmental goal of historic preservation.¹⁸¹ Moreover, the plaintiffs obtained no vested rights from the erroneously issued permits,¹⁸² especially because permits to use public property are in the nature of a privilege and are not entitled to due process protections.¹⁸³ Finally, the court held that the plaintiffs could not recover damages against the city even if they had a vested right, because the city was immune from liability under section 2-104 of the Tort Immunity Act.¹⁸⁴

C. Statutory and Jurisdictional Zoning Restrictions

During the *Survey* period, Illinois courts also have reviewed cases involving standing to bring zoning challenges, the ability to enforce existing ordinances, and the jurisdictional reaches of land use regulations. The issue of standing was addressed in *Tiskilwa*

for vagueness because ordinary person could not guess whether an asphalt plant would qualify as a permitted, special, or prohibited use under this ordinance).

178. 146 Ill. App. 3d 928, 497 N.E.2d 459 (1st Dist. 1986), *appeal denied*, 113 Ill. 2d 559 (1986).

179. *Id.* at 931, 497 N.E.2d at 462.

180. *Id.* at 930, 497 N.E.2d at 462. Rights of private persons to use public property have been limited in other cases decided during the *Survey* year. In *Hawthorne Bank of Wheaton v. Village of Glen Ellyn*, 154 Ill. App. 3d 661, 506 N.E.2d 988 (2d Dist. 1987), the court held that plaintiffs' erection of a canopy on a public right-of-way conferred on them no ascertainable right that could limit the city's use of that property. *Id.* at 667, 506 N.E.2d at 993.

181. *Foster & Kleiser*, 146 Ill. App. 3d at 932, 934, 497 N.E.2d at 463-64.

182. *Id.* at 934-35, 497 N.E.2d at 464.

183. *Id.* See also *Two Kats, Inc. v. Village of Chicago Ridge*, 147 Ill. App. 3d 440, 497 N.E.2d 1314 (1st Dist. 1986) (liquor license is a privilege, not a vested right, and as such is not entitled to due process consideration).

184. *Foster & Kleiser*, 146 Ill. App. 3d at 932, 497 N.E.2d at 462-63. See ILL. REV. STAT. ch. 85, para. 2-104 (1985).

Economic Development Corporation v. Zoning Board of Appeals.¹⁸⁵ In *Tiskilwa*, the zoning board was denied standing when it sought to appeal the validity of its own earlier order.¹⁸⁶ The board believed it had erred previously in granting a variance without proper notification to surrounding property owners, as required by ordinance.¹⁸⁷ The Illinois Appellate Court for the Third District held that only parties involved in the variance proceeding, not the administrative agency which conducted it, have standing to appeal the decision.¹⁸⁸ Hence, the board could not bring an independent challenge.

An attempt to enforce a permit requirement for home occupations was reviewed in *City of Pekin v. Kaminski*.¹⁸⁹ In *Kaminski*, the Illinois Appellate Court for the Third District found that the defendant, an insurance salesman, did not violate the zoning ordinance by failing to obtain a permit for a home occupation.¹⁹⁰ The court held that the defendant's listing of his home phone in the telephone directory and one isolated business transaction at his house did not constitute a home occupation under the ordinance.¹⁹¹

The extent of a municipality's jurisdiction to regulate matters of public health was tested in *People ex. rel. Kempiners v. Draper*.¹⁹² In *Draper*, the Illinois Supreme Court held that a mobile home park located outside of the boundaries of the City of Carbondale could be within the extraterritorial jurisdiction of the city to enforce health and quarantine ordinances, but only if the city had expressed its intent to exercise such extraterritorial jurisdiction.¹⁹³ Thus, because the city had not done so, state health and safety regulations governed the development and use of the park.¹⁹⁴

D. Condemnation

During the *Survey* period, several courts considered the government's power to condemn private property for public use. Although courts have allowed condemnation after a *prima facie*

185. 148 Ill. App. 3d 884, 500 N.E.2d 66 (3d Dist. 1986).

186. *Id.* at 887, 500 N.E.2d at 68.

187. *Id.* at 885, 500 N.E. 2d at 67.

188. *Id.* at 886-87, 500 N.E.2d at 68.

189. 155 Ill. App. 3d 826, 508 N.E.2d 776 (3d Dist. 1987).

190. *Id.* at 831, 508 N.E.2d at 779.

191. *Id.* at 830-31, 508 N.E.2d at 779.

192. 113 Ill. 2d 318, 497 N.E.2d 1166 (1986).

193. *Id.* at 321-22, 497 N.E.2d at 1168.

194. *Id.* at 322-23, 497 N.E.2d at 1168.

need for the land has been demonstrated,¹⁹⁵ and upon a payment of adequate compensation,¹⁹⁶ courts have not allowed condemnation when the government agency possesses no statutory authority to condemn specific parcels. In *Town of Libertyville v. Bank of Waukegan*,¹⁹⁷ condemnation of a conservation easement by a town was not permitted.¹⁹⁸ The Illinois Appellate Court for the Second District held that under the Township Open Space Act (the "Act"),¹⁹⁹ the "farm use" exemption protected this land from condemnation, because it was used for agricultural purposes.²⁰⁰ The fact that the town was attempting only to condemn a less than fee simple interest (the conservation easement) did not limit the applicability of the Act.²⁰¹ The court reiterated the notion that eminent domain statutes are to be construed strictly in favor of the property owner, and therefore denied the condemnation attempt.²⁰²

VII. PUBLIC FINANCE

A. Accounting of Funds

During the *Survey* period, Illinois courts faced several issues relating to public finance and the management and accounting of public funds. In *Ryan v. City of Chicago*,²⁰³ the city had been depositing pension tax fund receipts into its Aggregate Funds Account before transferring such receipts to the Pension Fund and retaining the interest derived from this money during the interim.²⁰⁴ Following a challenge to the city's accounting practices, the Illinois Appellate Court for the First District held that the city must turn over all interest accrued from the pension tax fund receipts to the Pension Fund,²⁰⁵ and the order was applied retroactively as well as prospectively.²⁰⁶ This order reversed the ruling of

195. See *Lake County Forest Preserve Dist. v. First Nat'l Bank of Waukegan*, 154 Ill. App. 3d 45, 506 N.E.2d 424 (2d Dist. 1987) (condemnation was allowed when the district had proved a prima facie need for the subject property).

196. See *Dept. of Transp. v. Birger*, 155 Ill. App. 3d 130, 507 N.E.2d 1321 (5th Dist. 1987) (adequate compensation may be computed for condemned property by comparison of sales prices of similar nearby property as proof of the value).

197. 152 Ill. App. 3d 1066, 504 N.E.2d 1305 (2d Dist. 1987).

198. *Id.* at 1071, 1073, 504 N.E.2d at 1307-08.

199. ILL. REV. STAT. ch. 139, paras. 321-325 (1985 & West Supp. 1986).

200. *Town of Libertyville*, 152 Ill. App. 3d at 1070-71, 504 N.E.2d at 1308.

201. *Id.*

202. *Id.* at 1070-73, 504 N.E.2d at 1308-10.

203. 148 Ill. App. 3d 638, 499 N.E.2d 517 (1st Dist. 1986), *appeal denied*, 113 Ill. 2d 585, 505 N.E.2d 361 (1987).

204. *Id.* at 640, 499 N.E.2d at 518.

205. *Id.* at 643, 499 N.E.2d at 520.

206. *Id.* at 645, 499 N.E.2d at 521.

the trial court, which had allowed the city to retain up to thirty days of interest earned from these funds while deposited in the general fund.²⁰⁷ In another case, *Richter v. Collinsville Township*,²⁰⁸ the Illinois Appellate Court for the Fifth District held that when taxpayers voted in a town meeting to transfer surplus revenue from a general fund to a special fund, proper accounting procedure required the inclusion of future tax receipts in computing the amount of surplus revenue that could be transferred to the special fund, because future expenses also were being computed.²⁰⁹

B. Allocation of Funds

Illinois courts were also called upon to review a challenge by a county department head to the amount of funds allocated to his department by the county board. In *McDonald v. County Board of Kendall County*,²¹⁰ the Illinois Appellate Court for the Second District held that the county sheriff was not entitled to declaratory relief concerning the rights of his department to county funds designated as "investigation" funds.²¹¹ The sheriff was unable to show a failure by the county board to supply his office with necessary funds.²¹² He was also unable to prove his claim that an unauthorized police force was created in the state's attorney's office.²¹³ The court held that all monies earmarked for "investigation" need not be given to the sheriff's department because investigatory responsibilities are not the exclusive jurisdiction of any one county officer.²¹⁴

C. Taxation and Revenue

In several different cases decided during the *Survey* year, citizens raised challenges to the governmental authority to impose certain taxes. In *Chicago Health Clubs, Inc. v. Picur*,²¹⁵ the Illinois Appellate Court for the First District held that the extension of the city

207. *Id.* at 644, 499 N.E.2d at 521.

208. 152 Ill. App. 3d 10, 503 N.E.2d 1175 (5th Dist. 1987), *appeal denied*, 115 Ill. 2d 550, 511 N.E.2d 437 (1987).

209. *See Richter*, 152 Ill. App. 3d 10, 503 N.E.2d 1175 (inclusion of future tax receipts proper in estimating tax surplus available for township road and bridge fund when future expenses already had been taken into account).

210. 146 Ill. App. 3d 1051, 497 N.E.2d 509 (2d Dist. 1986), *appeal denied*, 113 Ill. 2d 576, 505 N.E.2d 354 (1987).

211. *Id.* at 1056-57, 497 N.E.2d at 513.

212. *Id.* at 1056, 497 N.E.2d at 513.

213. *Id.*

214. *Id.* at 1055, 497 N.E.2d at 512.

215. 155 Ill. App. 3d 482, 508 N.E.2d 742 (1st Dist. 1987).

amusement tax to cover health and fitness clubs and related activities was constitutional.²¹⁶ The court rejected arguments by the plaintiffs that the tax was overbroad, vague, or without authority.²¹⁷ Other contentions that the tax violated equal protection rights and was an impermissible extraterritorial tax were also rejected.²¹⁸

A similar result was reached in *Forsberg v. City of Chicago*.²¹⁹ In *Forsberg*, the Illinois Appellate Court for the First District upheld the constitutionality of a city mooring tax despite numerous objections.²²⁰ The court found that the ordinance was within the power of the home rule unit, not unconstitutionally vague, and consistent with due process requirements.²²¹ Objections to the tax for its interference with interstate commerce and being void as an occupational tax also were rejected.²²²

Double taxation was alleged in *Hammerman v. Illinois State Toll Highway Authority*.²²³ The plaintiffs in *Hammerman* brought an action against the Tollway Authority claiming that the Motor Fuel Tax Law,²²⁴ which was enacted for repair and maintenance of highways, constituted double taxation with respect to roads where tolls already were collected for that purpose.²²⁵ The court held that there was no double taxation, because tollway usage is a matter of personal choice.²²⁶ Additionally, the complaint failed to state a cause of action against the Tollway Authority, which has no role in the imposition or collection of motor fuel taxes.²²⁷

VIII. CONCLUSION

During the *Survey* year, Illinois courts have examined a wide range of issues affecting the relationship between state and local governments and their citizens. In so doing, the courts have interpreted many statutes that define the roles and authority of, as well as limitations upon, public bodies. It is through this process that

216. *Id.* at 495, 508 N.E.2d at 750.

217. *Id.* at 491-93, 508 N.E.2d at 748-49.

218. *Id.* at 492-95, 508 N.E.2d at 750.

219. 151 Ill. App. 3d 354, 502 N.E.2d 283 (1st Dist. 1986), *appeal denied*, 114 Ill. 2d 545, 508 N.E.2d 727 (1987).

220. 151 Ill. App. 3d at 373, 502 N.E.2d at 298.

221. *Id.* at 361-63, 502 N.E.2d at 290-92.

222. *Id.* at 366, 368, 502 N.E.2d at 293-95.

223. 148 Ill. App. 3d 259, 498 N.E.2d 795 (1st Dist. 1986).

224. ILL. REV. STAT. ch. 120, paras. 417 - 434(a) (1985).

225. *Hammerman*, 148 Ill. App. 3d at 260, 498 N.E.2d at 797.

226. *Id.* at 266, 498 N.E.2d at 800.

227. *Id.* at 266, 498 N.E.2d at 801.

the courts fulfill their central role of balancing the rights of the individual with the rights of the people as expressed through the state and local governments.