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Local and State Government

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Local and State Government

Steve Lawrence*
and Margaret Quinlan**

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I. INTRODUCTION

During the *Survey* year, the Illinois courts addressed various state and local government issues, including governmental immunities, rights and benefits of public employees, and the Illinois Constitution's home rule¹ and special legislation² provisions. Although the Illinois courts did not create any substantial changes in these areas during the *Survey* year, the courts did resolve several unsettled issues concerning state and local government law.

Additionally, the Illinois General Assembly passed a number of bills relating to state and local governments during the *Survey* year. Among those were bills addressing Illinois Enterprise Zones and workers compensation claims of public employees.

II. GOVERNMENTAL IMMUNITY

Within the area of governmental immunities, the Illinois Supreme Court considered the issues of tort immunity and sovereign immunity. The Illinois Supreme Court also addressed the issue of public entities' immunities from statutes of limitations.

A. Tort Immunity

In Illinois, state and local governmental immunity from tort liability has its statutory basis in the Local Governmental and Governmental Employees Tort Immunity Act (the "Act").³ During the *Survey* year, the Illinois Supreme Court reviewed two sections of the Act. One of those sections provides that an insurance company which issues an insurance policy to a public entity cannot deny liability based on the immunity of the insured public entity.⁴ Under that section, a public entity effectively waives its immunity defense when it is protected by an insurance policy which is issued by a "company" and covers the alleged liability.⁵

In *Antiporek v. Village of Hillside*,⁶ the court narrowly construed this provision of the Act. In *Antiporek*, the mother of a minor injured on property owned by the Village of Hillside (the "Village") sued the Village for damages caused by the Village's alleged negligence. The plaintiff claimed that the Village had waived its immunity from tort liability because it was a member of the Inter-

1. ILL. CONST. art. VII, § 6. See *infra* notes 191-222.

2. ILL. CONST. art. IV, § 13. See *infra* note 224.

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

4. *Id.* at para. 9-103(c).

5. *Antiporek v. Village of Hillside*, 114 Ill. 2d 246, 247, 499 N.E.2d 1307 (1986).

6. 114 Ill. 2d 246, 499 N.E.2d 1307.

governmental Risk Management Agency ("IRMA").⁷ IRMA, an alternative to commercial insurance, is a risk management pool designed for Illinois municipalities.⁸

The Illinois Supreme Court affirmed the appellate court's decision and held that the Village of Hillside had not waived its immunity from liability for ordinary negligence by being a member of IRMA.⁹ The court relied on *Beckus v. Chicago Board of Education*,¹⁰ which held that reservation of funds by a public entity for self-insurance¹¹ does not constitute a waiver of tort immunity under the Act.¹² The Illinois Supreme Court in *Antiporek* held that the Village of Hillside's membership in IRMA was analogous to self-insurance.¹³ Therefore, the membership did not constitute a waiver of immunities under the Act.¹⁴

The court's decision in *Antiporek* has the impact of furthering the provision of governmental services in two ways. First, the court preserved the concept of sovereign immunity. In today's litigious society, the loss of this immunity would impede greatly the provision of traditional governmental services, including police, fire, and park services. Second, the *Antiporek* court refused to present municipalities with the hard choice of selecting either sovereign immunity or membership in an intergovernmental risk management agency. Membership in risk management agencies is one method for municipalities to effectively spread the risks of tort claims among the member municipalities. Risk spreading keeps costs and risk levels low and permits the continued delivery of traditional governmental services. Accordingly, the decision in *Antiporek*

7. *Id.* at 248, 499 N.E.2d at 1307.

8. *Id.* As members of IRMA, public entities which are too small to self-insure pool their resources and risks in order to protect themselves from possible "fiscal disasters" which might accompany extensive, non-immune liabilities. *Id.* at 247-48, 499 N.E.2d at 1307.

9. *Id.* at 252, 499 N.E.2d at 1309.

10. 78 Ill. App. 3d 558, 397 N.E.2d 175 (1st Dist. 1979).

11. Under self-insurance, a municipality pools its resources and bears all the risks. Any awards or settlements are paid directly from that pool of governmental money. *Antiporek*, 114 Ill. 2d at 250, 499 N.E.2d at 1308.

12. *Beckus v. Chicago Board of Education*, 78 Ill. App. 3d 558, 561, 397 N.E.2d 175, 178 (1979). The Illinois Supreme Court in *Antiporek* noted that the *Beckus* ruling had been confirmed subsequently by the legislature: "after the appellate court [in *Beckus*] had distinguished between waiver by acquisition of insurance and nonwaiver by self-insurance, the General Assembly amended section 9-103 without making any changes based on the *Beckus* distinction; this sequence strongly indicates that the appellate court has captured our legislators' intent." *Antiporek*, 114 Ill. 2d at 249, 499 N.E.2d at 1308.

13. *Antiporek*, 114 Ill. 2d at 251-52, 499 N.E.2d at 1309.

14. *Id.* at 252, 499 N.E.2d at 1309.

could have the impact of encouraging "risk management agencies."

The second section of the Local Governmental and Governmental Employees Tort Immunity Act considered by the Illinois Supreme Court during the *Survey* year provides that when a public employee is involved in the "execution or enforcement of any law," he and his employer are immune from actions for ordinary negligence.¹⁵ The Illinois Supreme Court decided two cases concerning this section and thus clarified its earlier decision in *Arnolt v. City of Highland Park*.¹⁶

In *Arnolt*, the court held that a police officer is not automatically immune from tort actions against him and his employer for ordinary negligence merely because he was on duty when he caused the injury.¹⁷ Instead, the court ruled that the determination of immunity depends on the facts and circumstances of each case.¹⁸ The court asserted that in order for the police officer to be protected by the Act, he clearly must be involved "in the execution or enforcement of any law."¹⁹ The *Arnolt* case, however, left unanswered the issue of what conduct would constitute "the execution or enforcement of any law."²⁰

During the *Survey* year, the Illinois Supreme Court in *Thompson v. City of Chicago*,²¹ attempted to clarify this matter. In *Thompson*, the plaintiff was struck and injured by the defendant police officer's car as the officer backed it away from an unruly crowd.²² The officer, who had been trying to disperse the crowd by moving the car slowly forward, reversed when the crowd began pelting the car with bottles, rocks, and debris.²³ The plaintiff was injured while the officer was driving his car in reverse. The plaintiff argued that although the police officer was enforcing the law when he drove forward, he ceased enforcing the law when he backed up and injured the plaintiff.²⁴

The Illinois Supreme Court disagreed and held that the enforcement of a law is rarely a single act, but is instead a "course of

15. ILL. REV. STAT. ch. 85, paras. 2-105, 2-202 (1985).

16. 52 Ill. 2d 27, 282 N.E.2d 144 (1972).

17. *Id.* at 33, 282 N.E.2d at 147.

18. *Id.* at 35, 282 N.E.2d at 149.

19. *Id.* at 33, 282 N.E.2d at 147.

20. ILL. REV. STAT. ch. 85, para. 2-202 (1985).

21. 108 Ill. 2d 429, 484 N.E.2d 1086 (1985).

22. *Id.* at 430, 484 N.E.2d at 1087.

23. *Id.* at 431, 484 N.E.2d at 1087.

24. *Id.* at 433, 484 N.E.2d at 1087-88.

conduct.”²⁵ The court reasoned that the police officer, in retreating, had not abandoned his attempt to enforce the law, but was still engaged in a “course of conduct” directed toward remedying a breach of the peace.²⁶ Therefore, the supreme court held a directed verdict for the defendant police officer, based on immunity for ordinary negligence as provided in the Act, was proper.²⁷

In the subsequent case of *Fitzpatrick v. City of Chicago*,²⁸ the Illinois Supreme Court was presented with a case analagous to *Thompson*. In *Fitzpatrick*, a police officer had parked his squad car alongside an expressway, at the scene of an accident in which the plaintiff had been involved.²⁹ The plaintiff was injured when the parked squad car, after being struck by another vehicle, was pushed into him.³⁰

In directing a verdict for the defendant police officer and his employer, the court explained that the Act is not limited to only negligent acts concerning the enforcement or execution of a law.³¹ Citing *Thompson*, the court reaffirmed its prior holding that the “execution or enforcement of any law” suggests a “course of conduct.” When the police officer was investigating the accident, the *Fitzpatrick* court reasoned he was engaged in enforcing the traffic laws and was therefore, along with his employer, protected from suit under the Act.³²

Read together, the *Thompson* and *Fitzpatrick* cases reach a workable result, fostering the efficient administration of government services. The holdings in *Thompson* and *Fitzpatrick* will promote the delivery of police services.

B. Sovereign Immunity

During the *Survey* year, the Illinois Supreme Court addressed the issue of sovereign immunity.³³ In Illinois, the State cannot be made a party in any suit except as provided in the Court of Claims Act (the “Act”).³⁴ The Act grants the Court of Claims exclusive

25. *Id.*

26. *Id.* at 434, 484 N.E.2d at 1088.

27. *Id.*

28. 112 Ill. 2d 211, 492 N.E.2d 1292 (1986).

29. *Id.* at 215, 492 N.E.2d at 1293.

30. *Id.* at 215, 492 N.E.2d at 1293-94.

31. *Id.* at 221, 492 N.E.2d at 1296.

32. *Id.* at 221-22, 492 N.E.2d at 1296.

33. According to the doctrine of sovereign immunity, the State or one of its departments can never be made a defendant in any action brought in the circuit court. *Moline Tool Co. v. Dep't of Revenue*, 410 Ill. 35, 37, 101 N.E.2d 71, 72 (1951).

34. ILL. REV. STAT. ch. 127, para. 801 (1985).

jurisdiction to hear claims against the State of Illinois.³⁵

In *Smith v. Jones*,³⁶ the plaintiffs were winning number holders in the Illinois State Lottery's "Lotto" game.³⁷ They alleged that the Lottery and its director had breached their contract with the plaintiffs by advertising a grand prize for that week for a substantially larger amount than actually was awarded.³⁸

The Illinois Supreme Court dismissed the case and held that the circuit court had been without subject matter jurisdiction due to the doctrine of sovereign immunity.³⁹ The court determined that although there are exceptions⁴⁰ to the law prohibiting suits against the State in the circuit courts, the plaintiff's allegations merely claimed a breach of contract by the Illinois State Lottery and its director and, therefore, did not constitute an exception.⁴¹

C. Limitations Immunity

According to common law, public entities, including state and local governments, are immune from statutes of limitations when they assert the rights of the public at large.⁴² In *County of DuPage v. Graham, Anderson, Probst & White*,⁴³ the Illinois Supreme Court considered whether this common law rule was applicable to actions arising from building construction disputes in light of a statute setting the time during which a "body politic" could bring an action.⁴⁴ The court held that the action filed by the County of

35. ILL. REV. STAT. ch. 37, para. 439.8 (1985).

36. 113 Ill. 2d 126, 129, 497 N.E.2d 738, 739 (1986).

37. *Id.*

38. *Id.* at 129-30, 497 N.E.2d at 739. Specifically, the plaintiffs alleged that the Lottery advertised a grand prize pool of \$1,750,000.00. The grand prize award, however, amounted to only \$744,471.00. *Id.* at 129, 497 N.E.2d at 739.

39. *Id.* at 134, 497 N.E.2d 741. See *supra* notes 33-35 and accompanying text.

40. *Smith v. Jones*, 113 Ill. 2d at 131, 497 N.E.2d at 740. An exception to the sovereign immunity bar from actions against state officials acting in their official capacity exists where the "complaint alleges that [a state] official is enforcing an unconstitutional law or violating a law of Illinois thus acting beyond his authority." *Id.* In *Smith*, the plaintiffs' complaint failed to allege that the director was enforcing an unconstitutional law. *Id.* at 132, 497 N.E.2d at 740-41. Also, the director was not violating any law by awarding an amount less than that advertised. *Id.*

41. *Id.* at 134, 497 N.E.2d at 741.

42. *City of Shelbyville v. Shelbyville Restorium, Inc.*, 96 Ill. 2d 457, 459, 451 N.E.2d 874, 877 (1983).

43. 109 Ill. 2d 143, 485 N.E.2d 1076 (1985).

44. *Id.* at 147, 485 N.E.2d at 1078 (citing ILL. REV. STAT. ch. 110, para. 13-214 (1985)). The statute provides "[a]s used in this Section, 'person' means any individual, any business or legal entity, or any body politic." ILL. REV. STAT. ch. 110, para. 13-214 (1985). The statute further provides that all actions against parties for acts or omissions related to construction must be commenced within two years from when the "person" bringing the action knew or should have known of the act or omission. *Id.*

DuPage was subject to the statute's limitations period.⁴⁵

The court in *Graham* held that section 13-214 of the Illinois Code of Civil Procedure,⁴⁶ which provides that the limitations period is applicable to "any body politic," is unambiguous and specifically designed to apply to public entities.⁴⁷ Thus, common law governmental limitations immunity will not bar the opposing party's use of a limitations defense based on that section of the Illinois Code of Civil Procedure.⁴⁸

III. MUNICIPAL ISSUES

The Illinois courts addressed a variety of issues of special interest to municipalities during the *Survey* year. Those issues included municipal ordinances preventing public nuisances and mandating sewer connections, municipalities' authority over park districts, marriage license fees, local option⁴⁹ referenda, and potential liability of a municipality due to negligent enforcement of certain ordinances.

A. Nuisance Ordinances

One of the most publicized cases the Illinois Supreme Court decided during the *Survey* year was *Chicago National League Ball Club v. Thompson*.⁵⁰ In that case, the Chicago National League Ball Club (the "Cubs") challenged the constitutionality of a Chicago city ordinance⁵¹ and an Illinois statute.⁵² Both laws had the effect of prohibiting night baseball at Wrigley Field, the Cubs' exclusive home playing field.⁵³

45. *Graham*, 109 Ill. 2d at 143, 153-54, 485 N.E.2d at 1080. Although the court held that the county's action was subject to the limitations period, the case was remanded to determine when the statute of limitations began to run against the county's claim. *Id.* at 154, 485 N.E.2d at 1081.

46. ILL. REV. STAT. ch. 110, para. 13-214 (1985).

47. *Graham*, 109 Ill. 2d at 152, 485 N.E.2d at 1080.

48. *Id.* at 153, 485 N.E.2d at 1080.

49. Local option is "[a]n option of self-determination available to a municipality or other governmental unit to determine a particular course of action without specific approval from state officials." BLACK'S LAW DICTIONARY 847 (5th ed. 1979).

50. 108 Ill. 2d 357, 483 N.E.2d 1245 (1985).

51. CHICAGO, ILL., MUNICIPAL CODE ch. 104.1, § 14.1 (1983). The ordinance prohibits athletic contests between 8:00 p.m. and 8:00 a.m. in playing fields which are not totally enclosed and contain more than 15,000 seats where any seats are located within 500 feet of 100 or more dwelling units. *Id.*

52. ILL. REV. STAT. ch. 111½, para. 1025 (1985). The statute provides that professional nighttime sporting events in a city of more than 1,000,000 inhabitants, in a stadium at which such events were not played prior to July 1, 1982, are subject to nighttime noise emission regulations of the Illinois Pollution Control Board. *Id.*

53. *Chicago National League*, 108 Ill. 2d at 363, 483 N.E.2d at 1248.

The court upheld both the statute and the ordinance,⁵⁴ ruling that neither violated the separation of powers or due process constitutional principles.⁵⁵ The court reasoned that the legislature and the City of Chicago have the authority to protect the public interest by abating public nuisances, including intolerable noise.⁵⁶

Furthermore, the court held that the statute and ordinance did not violate the Illinois Constitution's provision against special legislation⁵⁷ or the equal protection clauses of the state or federal constitution.⁵⁸ The court in *Chicago National League* reasoned that the legislation was not arbitrary or discriminatory. Instead, the court held that it was reasonably related to the legitimate governmental interest of protecting nearby residents in a densely populated area from a public nuisance.⁵⁹

B. Zoning Ordinances

Another question relating to municipal law decided by the Illinois Supreme Court during the *Survey* year was whether a park district is immune from the zoning ordinances of its host municipality. In *Wilmette Park District v. Village of Wilmette*,⁶⁰ the park district claimed that it was not subject to Wilmette's zoning ordinance. Consequently, the park district argued that it did not have to apply for a special use permit or participate in a special use hearing prior to installing new lights on its property.⁶¹

The Illinois Supreme Court, in affirming the appellate court's decision, held that the park district could not disregard the zoning ordinance of its host municipality.⁶² The court stressed the interest in intergovernmental cooperation. The court concluded that the Village of Wilmette's requirement that the park district attend a special use hearing for permit requests was not only a reasonable

54. *Id.* at 365, 483 N.E.2d at 1252.

55. *Id.* at 365-66, 483 N.E.2d at 1248-49. The Cubs argued that the statute and ordinance violated separation of powers and due process principles because each "declare[d] as law the conclusive presumption that night baseball at Wrigley Field alone constitutes a private nuisance." *Id.* at 364, 483 N.E.2d at 1248. Such a determination, the Cubs claimed, should have been made following a civil suit wherein an aggrieved party alleged a private nuisance. The Cubs asserted that a civil suit would have provided rights to discovery and cross-examination as well as an opportunity to defend. *Id.*

56. *Id.* at 364-65, 483 N.E.2d at 1248-49.

57. *Id.* at 367-72, 483 N.E.2d at 1250-52. See ILL. CONST. art. IV, § 13. See *infra* note 224.

58. U.S. CONST. amend. XIV; ILL. CONST. art. I, § 2.

59. *Chicago National League*, 108 Ill. 2d at 369-372, 483 N.E.2d at 1252.

60. 112 Ill. 2d 6, 490 N.E.2d 1282 (1986).

61. *Id.* at 10, 490 N.E.2d at 1283.

62. *Id.* at 15, 490 N.E.2d at 1287.

requirement, but also an opportunity for the Village and the park district to reconcile their competing interests.⁶³

In *Wilmette Park District*, the court ruled in favor of intergovernmental cooperation and efficiency. The court reasoned that it is more efficient for service districts to know in advance that they are subject to zoning and other restrictions of their host municipalities than for the parties to litigate each time a proposed district activity conflicts with the host municipality's ordinance.

C. Licensing Fees

The Illinois Supreme Court in recent years has considered the issue of whether fees may be imposed on certain local governmental administrative proceedings in order to fund remotely related state services.⁶⁴ In the 1984 case of *Crocker v. Finley*,⁶⁵ the Illinois Supreme Court held that the use of a five-dollar filing fee paid by parties seeking dissolution of marriage for the funding of domestic violence shelters was an unconstitutional violation of due process guarantees.⁶⁶

During the *Survey* year, the Illinois Supreme Court in *Boynton v. Kusper*⁶⁷ reaffirmed its prior decision in *Crocker*. In *Boynton*, the dispute concerned a state statute that required a portion of marriage license fees to be deposited with the county treasurer for eventual deposit into the State Treasury's Domestic Violence Shelter and Service Fund.⁶⁸ The court held the fee was a violation of due process.⁶⁹

In its analysis, the Illinois Supreme Court equated the additional fee on the marriage license cost to a tax. Accordingly, the court held that a rational relationship must exist between the purpose of the tax and the taxed class in order for the tax to be constitutional.⁷⁰ The *Boynton* court concluded, however, that the relationship between the purchase of a marriage license and domestic violence is too remote to satisfy the rational-relationship test of due process.⁷¹

Moreover, the *Boynton* court held that the tax could not with-

63. *Id.* at 17, 490 N.E.2d at 1287.

64. *See Crocker v. Finley*, 99 Ill. 2d 444, 459 N.E.2d 1346 (1984).

65. *Id.*

66. *Id.* at 456, 459 N.E.2d at 1352.

67. 112 Ill. 2d 356, 494 N.E.2d 135 (1986).

68. ILL. REV. STAT. ch. 40, paras. 2401-2403.1 (1985).

69. *Boynton*, 112 Ill. 2d at 362, 494 N.E.2d at 140.

70. *Id.* at 366, 494 N.E.2d at 139-40.

71. *Id.* at 366, 494 N.E.2d at 140.

stand the strict scrutiny test of due process. The court reasoned that because the right to marry is a fundamental right, the State may not interfere with that right absent a compelling State interest.⁷² The court held that the State had failed to demonstrate that it could not protect its interest in curbing domestic violence by any other means.⁷³

The *Boynton* case illustrates a restrictive view of the requirement of a rational relationship between the tax's purpose and the taxed class. This holding may suggest that courts will give greater scrutiny to all taxing measures.

D. Implied Statutory Authority

In *Buffalo, Dawson, Mechanicsburg Sewer Commission v. Boggs*,⁷⁴ the Illinois Supreme Court was presented with the issue of whether a legislatively created commission had overstepped its implied statutory authority. In particular, the court in *Buffalo* considered whether the tri-city sewer commission was vested with authority to enact an ordinance mandating sewer connection of parties within the tri-city area.⁷⁵ In holding that the commission had such authority, the *Buffalo* court noted that the commission was created for the purpose of planning and financing the common sewer system.⁷⁶ Also, the commission had the duty to establish rates sufficient to cover the costs of operation and maintenance.⁷⁷ The court reasoned that the commission could meet its objectives only by collecting the established rates.⁷⁸ Therefore, the *Buffalo* court held the mandatory sewer connection ordinance was a necessary adjunct to the commission's statutory obligations.⁷⁹

In *Buffalo*, the Illinois Supreme Court ruled that a legislatively created commission has authority to enact an ordinance mandating sewer connection by all residents within the commission's district.⁸⁰ In ruling for the commission, the court reasoned that the commission should have all the authority necessary to meet its statutory obligations.⁸¹

72. *Id.* at 368-69, 494 N.E.2d at 140.

73. *Id.* at 370-71, 494 N.E.2d at 141.

74. 109 Ill. 2d 397, 488 N.E.2d 258 (1985).

75. *Id.* at 399, 488 N.E.2d at 259.

76. *Id.* at 400, 488 N.E.2d at 259.

77. *Id.*

78. *Id.* at 400, 488 N.E.2d at 260.

79. *Id.*

80. *Id.*

81. *Id.*

E. Referenda Requirements

In the case of *Walgreen Co. v. Illinois Liquor Control Commission*,⁸² the Illinois Supreme Court addressed the constitutionality of section 9-2 of the Illinois Liquor Control Act of 1934.⁸³ Section 9-2 requires that voters of a precinct "in any city, village or incorporated town" who wish to pass upon the question of banning the sale of liquor in a local referendum, must file a petition with the clerk of the municipality with signatures of at least twenty-five percent of the municipality's or precinct's legally registered voters.⁸⁴ In *Walgreen Co.*, the controversy surrounded the validity of petitions gathered for a referendum to ban the sale of liquor in three Chicago precincts.⁸⁵

The circuit court held that section 9-2 violated the equal protection clause of the fourteenth amendment to the United States Constitution and thus signatures of twenty-five percent of the voters were unnecessary.⁸⁶ The Illinois Supreme Court reversed that decision.⁸⁷ The court held that because neither a fundamental right nor a suspect class was involved, the statute was required only to bear a rational relationship to the ends sought.⁸⁸ Concluding that the State had a strong interest in the economic stability of the liquor industry, the court held that section 9-2 did not violate equal protection principles.⁸⁹

F. Negligent Enforcement of Municipal Ordinances

Two appellate court cases decided this past *Survey* year addressed the potential liability of a municipality for the allegedly negligent enforcement of a municipal code or ordinance. Both cases relied upon the earlier Illinois Supreme Court decision in *Ferentchak v. Village of Frankfort*.⁹⁰

In *Ferentchak*, the plaintiff homeowners in the Village of Frankfort sued the Village for damages to their home caused by flood-

82. 111 Ill. 2d 120, 488 N.E.2d 619, *appeal dismissed*, 106 S. Ct. 2911 (1986).

83. ILL. REV. STAT. ch. 43, para. 167 (1985).

84. *Id.*

85. *Walgreen Co.*, 111 Ill. 2d at 122, 488 N.E.2d at 981.

86. *Id.*

87. *Id.* at 127, 488 N.E.2d at 984.

88. *Id.* at 127, 488 N.E.2d at 983.

89. *Id.* The *Walgreen Co.* court also stated that whether the twenty-five percent signature requirement was wise or the best means to the desired end was not a proper subject for a court to investigate. The court asserted that the General Assembly could have required sixty percent of the registered voters' signatures. *Id.* at 127, 488 N.E.2d at 983-84.

90. 105 Ill. 2d 474, 475 N.E.2d 822 (1985).

ing.⁹¹ The flooding resulted from the low foundation grade level. The low grade level, however, complied with the Village's minimum height regulation.⁹² The plaintiffs argued that because the Village's code administrator actively enforced the regulations while the house was being built, the Village undertook a duty to protect the plaintiffs from damages resulting from the low grade level. Thus, the plaintiffs claimed that the Village was liable for the inadequate protection and resulting damage to the plaintiffs' home.⁹³

The Illinois Supreme Court rejected the plaintiffs' contentions.⁹⁴ The court stated that the Village was merely enforcing the Code's minimum requirements, and in enforcing the Code, the Village did not incur any legal duty to the plaintiffs.⁹⁵ Accordingly, the court held that the Village was not liable to the plaintiffs for the flood damage caused by the low grade level of their home's foundation.⁹⁶

During the *Survey* year, the Illinois appellate courts considered issues analogous to the issue presented in *Ferentchak*. In *Swaw v. Ortell*,⁹⁷ the plaintiffs, homeowners in Tinley Park, sued the Village of Tinley Park for negligence in enforcing its building codes.⁹⁸ A number of serious defects in the structure and foundation were present in the plaintiffs' house and the Village of Tinley Park had been aware of the defects before the plaintiffs bought the house.⁹⁹ The plaintiffs alleged that because the Village had a duty to enforce its building codes, it also had a duty to protect the plaintiffs from defects discoverable through inspection.¹⁰⁰

The appellate court, citing *Ferentchak*, affirmed the lower court's dismissal of the complaint against the Village of Tinley Park.¹⁰¹ The *Swaw* court held that a municipality owes no duty to the public simply because it enforces its building codes.¹⁰² Furthermore, because the Village did not undertake any additional duties outside of its governmental function, the Village owed no special duty to the plaintiffs.¹⁰³ As a result, the court found that the Vil-

91. *Id.* at 476, 475 N.E.2d at 823.

92. *Id.*

93. *Id.* at 484, 475 N.E.2d at 827.

94. *Id.*

95. *Id.*

96. *Id.* at 485, 475 N.E.2d at 828.

97. 137 Ill. App. 3d 60, 484 N.E.2d 780 (1st Dist. 1985).

98. *Id.* at 65, 484 N.E.2d at 784.

99. *Id.*

100. *Id.* at 67, 484 N.E.2d at 785.

101. *Id.*

102. *Id.*

103. *Id.* at 68, 484 N.E.2d at 785.

lage of Tinley Park was not liable for the damage caused by the structural defects in the plaintiffs' home.¹⁰⁴

The second appellate court case decided during the *Survey* year that presented an issue analogous to that in *Ferentchak* was *Fryman v. JMK/Skewer*.¹⁰⁵ In *Fryman*, the plaintiffs sued the Peoria County Health Department for injuries due to contaminated food from a restaurant that the health department had known was serving contaminated food.¹⁰⁶

The appellate court affirmed the dismissal of the plaintiffs' claim against the Peoria County Health Department.¹⁰⁷ In affirming the holding in *Ferentchak*, the court stated that a public entity is not liable to the public for negligent enforcement of its laws.¹⁰⁸ Accordingly, the *Fryman* court held that the Peoria County Health Department was not liable to the public for any injury caused by its failure to enforce the county health ordinances.¹⁰⁹

IV. RIGHTS AND BENEFITS OF PUBLIC EMPLOYEES

A number of issues concerning the rights and benefits of public employees arose during the *Survey* year. The Illinois Supreme Court reviewed the manner in which certain pensions and civil service salaries are determined. The court also considered issues involving outside employment of deputy sheriffs. Additionally, the Illinois Appellate Court for the Fourth District addressed an issue involving collective bargaining agreements between municipalities and their employees.

A. Pensions

The Illinois Supreme Court considered the issue of judges' pensions in the case of *Felt v. Board of Trustees*.¹¹⁰ In *Felt*, the court analyzed the statutory amendment to section 18-125 of the Illinois Pension Code,¹¹¹ which changed the salary basis for computing retirement annuities of judges to the average salary for the final year of service as a judge.¹¹² Prior to the amendment, the retirement annuities were based on two factors: the date of the judge's enroll-

104. *Id.*

105. 137 Ill. App. 3d 611, 484 N.E.2d 909 (3d Dist. 1985).

106. *Id.* at 614, 484 N.E.2d at 910.

107. *Id.* at 614, 484 N.E.2d at 911.

108. *Id.* at 615, 484 N.E.2d at 912.

109. *Id.*

110. 107 Ill. 2d 158, 481 N.E.2d 698 (1985).

111. ILL. REV. STAT. ch. 108½, para. 18-125 (1985).

112. *Id.*

ment in the retirement system, and the salary of the judge on the last day of judicial service.¹¹³

The Illinois Supreme Court held that the amendment, as applied to the plaintiffs, was unconstitutional.¹¹⁴ The alterations to the plaintiffs' benefits were substantial.¹¹⁵ Thus, the court determined that applying the amendment retroactively violated the state constitutional prohibition against the diminution of retirement benefits¹¹⁶ and federal constitutional prohibitions against impairment of contracts.¹¹⁷

Another question involving retirement benefits came before the Illinois Supreme Court this *Survey* year in *Braun v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*.¹¹⁸ The issue in *Braun* concerned the proper interpretation of section 6-211 of the Illinois Pension Code.¹¹⁹ The Illinois Pension Code provides that pensions for firemen are based upon the actual annual salary of the individual, excluding salaries paid to a fireman on temporary assignment.¹²⁰ In *Braun*, the plaintiff fireman sought to have his pension determined on the basis of his actual salary in the higher paying unclassified positions he held prior to his retirement rather than his salary at the highest civil service rank he attained.¹²¹

While the case was pending in the appellate court, the Pension Code was amended to provide that a fireman who held a position at the will of the "Commissioner or other appointing authority" was deemed to have held a temporary position.¹²² The *Braun* court determined that the plaintiff's unclassified positions fit into the class described by the amendment. Therefore, the unclassified positions could not be used as the basis for determining the plaintiff's pension.¹²³ Thus, the court held that the plaintiff's pension would

113. ILL. REV. STAT. ch. 108½, para. 18-125 (1981), amended by ILL. REV. STAT. ch. 108½, para. 18-125 (1985).

114. *Felt*, 107 Ill. 2d at 168, 481 N.E.2d at 702.

115. *Id.* at 166, 481 N.E.2d at 700. The annuities were reduced by \$3,187.44 for two of the plaintiffs and \$5,842.80 for another. *Id.* at 162, 481 N.E.2d at 700.

116. ILL. CONST. art. XIII, § 5. Article XIII, section 5 provides in relevant part: "Membership in any pension or retirement system of the State, . . . shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

117. *Felt*, 107 Ill. 2d at 168, 481 N.E.2d at 702 (1985). See U.S. CONST. art. I, § 10; ILL. CONST. art. I, § 16.

118. 108 Ill. 2d 119, 483 N.E.2d 8 (1985).

119. ILL. REV. STAT. ch. 108½, para. 6-211 (1985).

120. *Id.*

121. *Braun*, 108 Ill. 2d at 120-21, 483 N.E.2d at 9.

122. ILL. REV. STAT. ch. 108½, para. 6-211 (1985).

123. *Braun*, 108 Ill. 2d at 127-28, 483 N.E.2d at 12.

be based on the highest civil service rank that he had attained.¹²⁴ The court determined that the retroactive effect of the amendment did not violate the Illinois Constitution's guarantee against diminution of pensions.¹²⁵ The court reasoned that the amendment was properly viewed as a clarification rather than a modification of the existing code provisions and thus did not change the result or the law.¹²⁶

B. *The Compensation Review Act*

In the case of *Quinn v. Donnewald*,¹²⁷ the Illinois Supreme Court addressed the constitutionality of the Compensation Review Act (the "Act").¹²⁸ The Act establishes a Compensation Review Board (the "Board") and authorizes the Board to recommend to the General Assembly the compensation for members of the General Assembly, judges, elected constitutional officers, and certain appointed officers of the State.¹²⁹

Procedurally, the Act requires that the Board file compensation recommendations with the General Assembly.¹³⁰ The General Assembly then may vote to disapprove the recommendations in whole or to reduce them.¹³¹ If a majority of both houses of the General Assembly does not reject the recommendations, then the Board's recommendations become law and the legislature appropriates the necessary funds.¹³²

In *Quinn*, the plaintiffs as taxpayers, contended that the Act violated provisions of the Illinois Constitution requiring salaries of such public officials be "provided by law."¹³³ The plaintiffs also alleged that the Act was prohibited by the Illinois Constitutional provisions requiring both houses to vote on all laws.¹³⁴ Finally,

124. *Id.*

125. *See supra* note 116.

126. *Braun*, 108 Ill. 2d at 126-27, 483 N.E.2d at 11-12.

127. 107 Ill. 2d 179, 483 N.E.2d 216 (1985).

128. ILL. REV. STAT. ch. 63, paras. 901-906 (1985).

129. *Id.* at para. 904.

130. *Id.*

131. *Id.* at para. 905. The General Assembly must act on the recommendations within 30 days after the legislature convenes. *Id.*

132. *Id.* at paras. 905, 906.

133. *Quinn*, 107 Ill. 2d at 186, 483 N.E.2d at 219. *See* ILL. CONST. art. IV, § 11; ILL. CONST. art. VI, § 14; ILL. CONST. art. V, § 21. Illinois Constitutional provisions require that salaries of judges, legislators and executive officials shall be "provided" or "established" by law.

134. ILL. CONST. art. IV, § 8(c). Article IV, section 8(c) provides in relevant part: "No bill shall become a law without the concurrence of a majority of the members elected to each house. Final passage of a bill shall be by record vote. . . ."

they alleged that the Act violated the presentments¹³⁵ and appointments clauses,¹³⁶ as well as the law prohibiting legislative vetoes.¹³⁷

The court disagreed with each of the plaintiffs' allegations. First, the court reasoned that the salaries were "provided by law" because the Board merely made salary recommendations while the General Assembly remained responsible for actually setting the salaries.¹³⁸ Furthermore, the *Quinn* court held there was no violation of the constitutional provisions requiring passage by both houses and presentment to the Governor because the Act established the salary recommendation procedure, was passed by both houses, and was presented to the Governor.¹³⁹ Moreover, an appropriations bill containing new salaries would have to be passed by both houses and signed by the Governor.¹⁴⁰

Finally, the court reasoned that the Act did not violate the appointments clause because the appointments clause only prohibits the General Assembly from appointing officers to the executive branch. The court noted that the Board members were not officers of the executive branch and therefore no violation of the appointments clause had occurred.¹⁴¹ Applying this reasoning, the court also held that the Act did not constitute a legislative veto. Thus, the *Quinn* court reasoned that the law prohibiting legislative vetoes¹⁴² was inapplicable. The court reasoned that because the Board's acts constituted a legislative, rather than an executive function, the procedure authorized by the Act for disaffirming a recommendation did not constitute an illegal legislative veto.¹⁴³

135. *Id.* at §§ 9(a), (b). Article IV, section 9(a) provides, in relevant part: "[e]very bill passed by the General Assembly shall be presented to the Governor....If [he] approves the bill, he shall sign it and it shall become law." Article IV, section 9(b) provides, in relevant part: "[i]f the Governor does not approve the bill, he shall veto it by returning it with his objections to the house in which it originated."

136. *Id.* at § 9(a). Article V, section 9(a) provides in relevant part: "[t]he Governor shall nominate and . . . shall appoint all officers whose election or appointment is not otherwise provided for. . . . The General Assembly shall have no power to elect or appoint officers of the Executive Branch."

137. *See* *Immigration & Naturalization Service v. Chadha*, 462 U.S. 919 (1983). A legislative veto exists when the legislature delegates certain powers to the executive branch, yet it retains the right to cancel an executive action that was based on that delegated power by means of a resolution. *Id.* at 923-26. The legislative veto device as used by the United States House of Representatives was held unconstitutional. *Id.* at 959.

138. *Quinn*, 107 Ill. 2d at 186-87, 483 N.E.2d at 219 (1985).

139. *Id.* at 190, 483 N.E.2d at 222.

140. *Id.* at 190, 483 N.E.2d at 221-22.

141. *Id.* at 192, 483 N.E.2d at 222.

142. *See supra* note 137.

143. *Quinn*, 107 Ill. 2d at 192, 483 N.E.2d at 222.

C. *Sheriff's Merit System Act*

In *Schalz v. McHenry County Sheriff's Department Merit Commission*,¹⁴⁴ the plaintiffs, full-time deputy sheriffs in McHenry County, challenged the authority of the Merit Commission (the "Commission")¹⁴⁵ to promulgate rules restricting deputy sheriffs' secondary employment.¹⁴⁶ Pursuant to its perceived rulemaking authority under the Sheriff's Merit System Act,¹⁴⁷ the Commission had enacted rules granting itself the authority to approve or disapprove requests by full-time deputy sheriffs to take secondary employment.¹⁴⁸ The plaintiffs argued that the Commission had no such authority. The Illinois Supreme Court agreed.¹⁴⁹ The court noted that the Commission's authority arose from the Sheriff's Merit System Act, which neither expressly nor impliedly grants the Commission the authority to promulgate substantive rules of conduct for member of sheriffs' departments. Thus, the court held the Commission had exceeded its authority when it promulgated rules that attempted to regulate the outside employment of deputy sheriffs.¹⁵⁰

D. *Collective Bargaining Agreements*

During the *Survey* year, the Illinois Appellate Court for the Fourth District reviewed a collective bargaining agreement between the city of Quincy and some of its employees. In *Lodge No. 822 v. City of Quincy*,¹⁵¹ Lodge No. 822, International Association of Machinists and Aerospace Workers Union (the "Union"), representing all its members employed by the city of Quincy, sued the

144. 113 Ill. 2d 198, 497 N.E.2d 731 (1986).

145. The Sheriff's Merit Commission Act provides for the creation of a Sheriff's Office Merit Commission which has the duties "of certification for employment and promotion, and . . . to discipline or discharge as the circumstances may warrant. All full-time deputy sheriffs [are] under the jurisdiction of this Act." ILL. REV. STAT. ch. 125, para. 157 (1985).

146. *Schalz*, 113 Ill. 2d at 199-200, 497 N.E.2d at 731 (1986). Specifically, the rules provided that full-time deputy sheriffs who sought secondary employment first had to get approval from the Sheriff. The Sheriff would then make his recommendations to the Merit Commission which decided whether to permit the secondary employment. Also, the rules prohibited full-time deputy sheriffs from performing any function that was usually of the Sheriff's Department for his or her own gain or in exchange for any "article of value." *Id.* at 201, 497 N.E. 2d at 732.

147. ILL. REV. STAT. ch. 125, para. 159 (1985).

148. *Schalz*, 113 Ill. 2d at 200-01, 497 N.E.2d at 732.

149. *Id.* at 206, 497 N.E.2d at 734.

150. *Id.*

151. 137 Ill. App. 3d 425, 484 N.E.2d 464 (4th Dist. 1985).

city of Quincy to compel arbitration.¹⁵² Specifically, the Union claimed that Quincy's policy of replacing workers with temporary employees violated the collective bargaining agreement's provision requiring Quincy to notify the Union when an existing job classification was changed.¹⁵³ Because of this alleged violation, the Union claimed that Quincy was required to submit to arbitration to settle the dispute.¹⁵⁴

The appellate court refused to compel the city of Quincy to arbitrate the dispute.¹⁵⁵ The reviewing court held that the grievance did not require arbitration under the collective bargaining agreement.¹⁵⁶ Moreover, the court noted that Quincy's policy of hiring temporary employees was not subject to the collective bargaining agreement's provision regarding changes in job classifications because these job classifications were not changed.¹⁵⁷ The court also noted that a nexus between the dispute and the agreement's provisions was necessary for the court to consider the issue arbitrable. The appellate court held that such a nexus was missing¹⁵⁸ and, accordingly, the Union was not entitled to arbitration.¹⁵⁹

V. PUBLIC INTEREST

During the *Survey* year, the Illinois Supreme Court was faced with several issues of public interest. Among the issues the court considered were abortion, public demonstrations, and the due process requirements for revoking drivers' licenses.

A. Abortion

The State Records Act (the "Act")¹⁶⁰ contains a provision requiring that reports and records of the "obligation, receipt and use of public funds" be made available to the public for inspection.¹⁶¹ In *Family Life League v. Department of Public Aid*,¹⁶² the Illinois Supreme Court examined whether the Act requires the disclosure of the names of providers of abortion services, the number of abor-

152. *Id.* at 425, 484 N.E.2d at 465.

153. *Id.* at 428, 484 N.E.2d at 466.

154. *Id.*

155. *Id.* at 431, 484 N.E.2d at 468.

156. *Id.*

157. *Id.* at 430, 484 N.E.2d at 467-68.

158. *Id.* at 431, 484 N.E.2d at 468.

159. *Id.*

160. ILL. REV. STAT. ch. 116, paras. 43.4-.28 (1985).

161. *Id.* at para. 43.6.

162. 112 Ill. 2d 449, 493 N.E.2d 1054 (1986).

tions performed, and the amounts paid for those services under the Medicaid program.¹⁶³

The Department of Public Aid (the "Department") agreed that the records at issue were within the purview of the Act. The Department argued, however, that the records should not be disclosed because such disclosure would infringe upon the provider's and the abortion recipient's right of privacy.¹⁶⁴ The court rejected the Department's arguments and held that in this instance, the provider's and recipient's right of privacy were not sufficiently strong to overcome the public's interest in knowing how its tax dollars are spent.¹⁶⁵ The court stated that it would be unfair to presume that making available the names of abortion providers would subject them to harassment and thereby violate their right of privacy.¹⁶⁶ Because Medicaid funds are available for abortions only in instances when the mother's life is in danger, the court reasoned that such abortions were least likely to result in harassment.¹⁶⁷

The court in *Family Life League* also held that the Act did not violate the abortion recipient's right of privacy, which protects a woman's right to obtain an abortion. The court reasoned that it was unlikely that abortion providers would discontinue such services simply because their names would be disclosed. Therefore, disclosure of the providers' names under the Act would not diminish the recipient's choice of a provider.¹⁶⁸

As moneys for the providing of services by government and quasi-governmental entities dwindle, it is unclear whether governments will be able to protect the rights of the recipients of those benefits. As the needs competing for limited public funds grow in number, the toll on certain basic freedoms may be great.

B. Public Demonstrations

Another public interest issue addressed by the Illinois Supreme Court during the *Survey* year concerned the Illinois Public Demonstrations Law (the "Law").¹⁶⁹ The Law provided that prior to demonstrating on a public street, participants had to give notice to "the principal law enforcement officer."¹⁷⁰ The "principal law en-

163. *Id.* at 451-52, 493 N.E.2d at 1055-56.

164. *Id.* at 453, 493 N.E.2d at 1056.

165. *Id.* at 455-56, 493 N.E.2d at 1057-58.

166. *Id.* at 456, 493 N.E.2d at 1058.

167. *Id.*

168. *Id.* at 454-56, 493 N.E.2d at 1057-58.

169. ILL. REV. STAT. ch. 38, paras. 85-1 to -9 (1985).

170. *Id.* at para. 85-5.

forcement officer" would then set a limit on the number of persons permitted to participate in order to protect the public from unreasonable disruption of traffic and of police, fire, and emergency services.¹⁷¹

In *People v. Bossie*,¹⁷² the defendants were arrested during a demonstration for nuclear disarmament and were charged with violating the Law.¹⁷³ The demonstrators then challenged the constitutionality of the Law, claiming it violated their free speech and assembly rights, and due process rights under the first and fourteenth amendments to the United States Constitution.¹⁷⁴

The State contended the Law was a "constitutionally permissible time, place, and manner restriction" on free expression. The Illinois Supreme Court, however, ruled to the contrary.¹⁷⁵ It held that the term "the principal law enforcement officer," which was never defined in the Law, was unconstitutionally vague¹⁷⁶ because a person of ordinary intelligence would have to guess at its meaning.¹⁷⁷ Therefore, the court concluded, the Law violated the due process clause of the fourteenth amendment and chilled first amendment rights by permitting "arbitrary and discriminatory enforcement."¹⁷⁸

C. *Due Process In Revoking Drivers' Licenses*

In *People ex rel. Eppinga v. Edgar*,¹⁷⁹ the Illinois Supreme Court confronted the issue of whether a prehearing revocation of a driver's license was a violation of due process guarantees. In *Eppinga*, the plaintiff caused a head-on collision in which the parties in the other car were injured severely.¹⁸⁰ The plaintiff was arrested and charged with driving under the influence of alcohol.¹⁸¹ Upon certification of the incident by the State's Attorney, the Secretary of State revoked the plaintiff's driving privileges prior to trial.¹⁸²

171. *Id.* at paras. 85-2, -4.

172. 108 Ill. 2d 236, 483 N.E.2d 1269 (1985).

173. *Id.* at 238, 483 N.E.2d at 1269.

174. *Id.*

175. *Id.* at 239-42, 483 N.E.2d at 1270-71.

176. *Id.* at 242, 483 N.E.2d at 1271.

177. *Id.*

178. *Id.* at 241, 483 N.E.2d at 1271.

179. 112 Ill. 2d 101, 492 N.E.2d 187, *cert. denied*, 107 S. Ct. 314 (1986).

180. *Id.* at 103, 492 N.E.2d at 188.

181. *Id.*

182. *Id.* See ILL. REV. STAT. ch. 95½, para. 6-206(a)(1) (1985). Paragraph 6-206(a)(1) provides in relevant part: "[t]he Secretary of State is authorized to suspend or revoke the driving privileges of any person without preliminary hearing upon a showing. . .that such person: (1) Has committed an offense for which mandatory revocation of

The plaintiff argued that this revocation of his driving privileges was a deprivation of property without due process of law, as guaranteed by the fourteenth amendment.¹⁸³

The Illinois Supreme Court held that under the circumstances in *Eppinga*, a prehearing revocation of the plaintiff's driving privileges did not constitute a deprivation of property without due process of law.¹⁸⁴ The court relied on the United States Supreme Court cases of *Dixon v. Love*¹⁸⁵ and *Mackey v. Montrym*,¹⁸⁶ both of which involved revocation or suspension of a driver's license without a prior hearing. In *Dixon* and *Mackey*, the United States Supreme Court reasoned that although the interest in a driver's license and the interest in driving a motor vehicle are protected by the fourteenth amendment, those interests are "not so great as to require" a hearing prior to revocation.¹⁸⁷ Furthermore, considering the safety hazard posed by drunk drivers, the State's interest in highway safety is sufficiently strong. Thus, applying *Dixon* and *Mackey*, the *Eppinga* court held that a prehearing revocation did not violate due process protections.¹⁸⁸

The court's decision in *People ex rel. Eppinga v. Edgar* may reflect the State's reaction to the nationwide intolerance for driving under the influence of alcohol. The court impliedly ruled that this interest in highway safety outweighs the interest in a driver's license and in driving an automobile. As drunk driving laws and penalties become more severe nationwide, this case suggests that Illinois will be equally strict.

a driver's license or permit is required upon conviction." See also ILL. ADMIN. CODE tit. 92, ch. II, § 1040.35 (1985). This section of the Code provides that when one commits an offense such as driving under the influence and this offense results in serious bodily injury or death, the driving record of the offender will be reviewed and his or her license may be revoked. *Id.*

183. *Eppinga*, 112 Ill. 2d 101, 106, 492 N.E.2d 187, 189.

184. *Id.* at 110-11, 492 N.E.2d at 191.

185. 431 U.S. 105 (1977). In *Dixon*, the driver's license of the plaintiff was revoked after being suspended three times within a ten year period. The Supreme Court balanced the State's and licensee's interests and held that one's interest in a driver's license was "not so great as to require" a prehearing hearing, the risk of erroneous deprivation, which could only happen through clerical error, was not great, and the government had a strong interest in the procedure for revocation. Therefore, the prehearing revocation did not violate due process. *Id.* at 113-15.

186. 443 U.S. 1 (1979). In *Mackey*, the plaintiff's driver's license was suspended for the licensee's refusal to submit to a breath-analysis test. The Court followed the reasoning in *Dixon*. *Id.* at 11-12 (citing *Dixon*, 431 U.S. 105). See *supra* note 185.

187. *Eppinga*, 112 Ill. 2d 101, 110, 492 N.E.2d 187, 190-91.

188. *Id.*

VI. ILLINOIS CONSTITUTIONAL PROVISIONS

During the *Survey* year, the state and local government issues arising under the Illinois Constitution primarily addressed two provisions of the Illinois Constitution. These provisions were the home rule provision¹⁸⁹ and the special legislation provision.¹⁹⁰

A. Home Rule

Home rule is a "constitutional provision or type of legislative action which results in providing local cities and towns with a measure of self government if such local government accepts terms of the state legislation."¹⁹¹ In two cases decided during *Survey* year, the Illinois Supreme Court reviewed the home rule authorities of Illinois municipalities.

In *Dunne v. County of Cook*,¹⁹² the Illinois Supreme Court considered the authority of the Cook County Board of Commissioners (the "Board") to adopt an ordinance altering the vote necessary to override the veto of the president of the Board. Specifically, the Board enacted an ordinance that reduced from four-fifths to three-fifths the majority required to override the president's veto.¹⁹³ The plaintiff in *Dunne* contended that this ordinance violated section 6(f) of article VII of the Illinois Constitution by altering the "form of government" without approval by referendum.¹⁹⁴

In determining whether the ordinance effected an alteration in the "form of government" within the meaning of section 6(f), the court reasoned that reducing the vote necessary to override the Board president's veto diminished the power of the president while augmenting the power of the Board. The *Dunne* court held that this shift was equivalent to changing the "form of government."¹⁹⁵ Thus, the *Dunne* court concluded that absent submission to approval by referendum, as required by section 6(f), the ordinance was invalid.¹⁹⁶

The Illinois Supreme Court in *Dunne* cited an observation made

189. ILL. CONST. art. VII, § 6.

190. *Id.* at art. IV, § 13.

191. BLACK'S LAW DICTIONARY 660 (5th ed. 1979).

192. 108 Ill. 2d 161, 483 N.E.2d 13 (1985).

193. *Id.* at 163, 483 N.E.2d at 14.

194. *Id.* at 163-64, 483 N.E.2d at 14. See ILL. CONST. art. VII, § 6(f). Article VII, section 6(f) provides in relevant part: "[a] home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law. . . ."

195. *Dunne*, 108 Ill. 2d at 166, 483 N.E.2d at 15 (1985).

196. *Id.* at 167, 483 N.E.2d at 15.

in the appellate court's dissenting opinion. The appellate court's dissent explained that the original reason for requiring the four-fifths veto override was to insure that the votes of commissioners representing the area outside of Chicago were not dominated by the votes of those from within Chicago.¹⁹⁷ Thus, the supreme court indeed may have been persuaded by the resulting disadvantage to commissioners from outside of Chicago.

The decision in *Dunne* may result in heightened judicial awareness of decisions that disadvantage one group of elected officials and their constituents. In the future, disputes involving entities subject to joint jurisdiction may be resolved in a manner that maintains a balance between the relative voting strengths of the various constituencies represented. Thus, litigation concerning McCormick Place Convention Center, which is subject to state and local jurisdiction, and litigation regarding O'Hare Airport, which is subject to state, county, and local jurisdiction, could invite similar balancing considerations.

The second case that the Illinois Supreme Court addressed concerning home rule authority was *Leck v. Michaelson*.¹⁹⁸ In *Leck*, as in *Dunne*, article VII, section 6(f) of the 1970 Illinois Constitution was at issue.

In *Leck*, the Village of Lansing had passed a referendum pursuant to section 6(f) which required a run-off election for any Village office for which no candidate received fifty percent of the votes cast.¹⁹⁹ After a Village election, the plaintiffs, registered voters in the Village of Lansing, brought suit to compel the Cook County Board of Elections to conduct a run-off election for two Village trustee positions for which no candidate received fifty percent of the vote.²⁰⁰ The plaintiffs claimed that such a run-off election was required pursuant to the referendum and subsequently enacted Village ordinance.²⁰¹

197. *Id.* at 164-65, 483 N.E.2d at 14. When the statute requiring a four-fifths veto override was passed, there were fifteen commissioners, ten from Chicago, and five from the suburbs. Thus, a three-fifths vote would have permitted the ten Chicago commissioners to override vetoes of a president from the suburbs, leaving the suburban commissioners without a voice in the override veto. *Id.* at 164, 483 N.E.2d at 14.

198. 111 Ill. 2d 523, 491 N.E.2d 414 (1986).

199. *Id.* at 525-26, 491 N.E.2d at 414-15. See ILL. CONST. art. VII, § 6(f). Article VII, section 6(f) provides in relevant part, that home rule units may "adopt, alter or repeal a form of government" by referendum and "[a] home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law."

200. *Leck*, 111 Ill. 2d at 525, 491 N.E.2d at 414-15.

201. *Id.*

The defendants, the Cook County Board of Elections, challenged the constitutionality of the run-off election system.²⁰² The defendants noted that the referendum proposition was not self-executing and the ordinance that was passed to implement the proposition contained reforms not included in the proposition. Accordingly, the defendants argued, because the ordinance's reforms were not passed by referendum, they violated the home rule provision which requires approval by referendum when a home rule unit alters its "form of government" by changing the manner of selecting its officers.²⁰³

In evaluating the referendum proposition and the ordinance, the *Leck* court addressed a number of issues regarding the run-off election system that had been left unresolved by the referendum proposition and ordinance.²⁰⁴ First, the terms of the proposition did not indicate how or when a run-off election would be held.²⁰⁵ A later run-off election automatically would change the lengths of the terms of office for the trustees to be elected and the departing trustees.²⁰⁶ Although the unavoidable change in the lengths of the terms of office was not considered in the proposition, the court noted that it was a change in the "form of government" and thus subject to voter approval under the home rule authority.²⁰⁷

The *Leck* court also observed a number of conflicts between the ordinance and the proposition.²⁰⁸ Finally, the court held that the 1979 Lansing proposition was fatally defective under article VII, section 6(f) of the 1970 Illinois Constitution because of its ambiguity and vagueness.²⁰⁹ Thus, the court refused to compel a run-off election under the proposition and ordinance.²¹⁰

The decision in *Leck v. Michaelson* must be considered by any home rule unit changing its election process. As the court noted, "[t]he Lansing referendum illustrates the mischief that may result from a proposition that initiates a change in the election process without adequately working through and articulating the details of the new scheme."²¹¹

202. *Id.* at 525, 491 N.E.2d at 415.

203. *Id.* at 528, 491 N.E.2d at 416.

204. *Id.* at 528-30, 491 N.E.2d at 416-17.

205. *Id.* at 528-29, 491 N.E.2d at 416.

206. *Id.* at 529, 491 N.E.2d at 416.

207. *Id.* See ILL. CONST. art. VII, § 6(f).

208. *Leck*, 111 Ill. 2d at 529, 491 N.E.2d at 416.

209. *Id.* at 531, 491 N.E.2d at 417.

210. *Id.*

211. *Id.*

In *Royal Liquor Mart, Inc. v. City of Rockford*,²¹² the Illinois Appellate Court for the Second District determined that a sales tax enacted by a municipality under its home rule authority remained valid following the repeal of the municipality's home rule status. The plaintiffs, retailers who paid the sales tax, sued the city of Rockford to enjoin it from collecting the sales tax and to recover all such taxes paid to the city after April 14, 1983.²¹³ They argued that the sales tax ordinance which had been enacted under Rockford's home rule authority became invalid when Rockford repealed its home rule powers in a referendum held April 12, 1983 and certified on April 14, 1983.²¹⁴

The sales tax ordinance originally was passed in order to fund the "operating deficit" of the Rockford "Metro Center" exposition building, thereby guaranteeing the operation of the "Metro Center" building authority while the original bonds that provided the capital for the project were outstanding.²¹⁵ The ordinance was scheduled to constitute a levy for either twenty years or until the retiring of all bonds issued for the "Metro Center" and supported by state funding, whichever occurred later.²¹⁶

The appellate court in *Royal Liquor* affirmed the circuit court's decision and upheld the validity of the tax.²¹⁷ The court reasoned that if an act by a municipality under its home rule authority could be invalidated by the repeal of home rule powers, a home rule municipality would be unable to make long term commitments.²¹⁸ Moreover, the court noted that an invalidation of acts of a former home rule municipality upon repeal of home rule authority, would lead to unpredictability in the laws created while the municipality enjoyed home rule.²¹⁹

The *Royal Liquor* court also reasoned that a tax's validity is determined at the time the tax is levied²²⁰ and the later repeal of home rule does not affect the tax's validity.²²¹ Because the plaintiffs cited no clear authority in support of their argument, the *Royal Liquor* court held that they failed to establish the invalidity

212. 133 Ill. App. 3d 868, 479 N.E.2d 485 (2d Dist. 1985).

213. *Id.* at 869, 479 N.E.2d at 486.

214. *Id.* See also ILL. CONST. art. VII, § 6(b). Article VII, section 6(b) provides that "[a] home rule unit by referendum may elect not to be a home rule unit."

215. *Royal Liquor*, 133 Ill. App. 3d at 872, 479 N.E.2d at 488.

216. *Id.* at 876, 479 N.E.2d at 490-91.

217. *Id.* at 869, 479 N.E.2d at 486.

218. *Id.* at 875-76, 479 N.E.2d at 490.

219. *Id.*

220. *Id.* at 876, 479 N.E.2d at 490-91.

221. *Id.*

of the tax.²²²

B. Special Legislation

The special legislation provision of the 1970 Illinois Constitution²²³ prohibits the General Assembly from passing special or local laws "when a general law is or can be made applicable."²²⁴ The purpose of this provision is "to prevent the enlargement of the rights of one or more persons and the impairment of, or discrimination against, the rights of others."²²⁵ The provision, however, does not prohibit classifications in legislation if there is a reasonable basis for the classification and the classification bears a reasonable relation to the evil sought to be corrected and the purpose sought to be achieved.²²⁶

In *In re Belmont Fire Protection District*,²²⁷ the Illinois Supreme Court considered whether "An Act to add section 19a to An Act in relation to fire protection districts" (the "Act")²²⁸ violated the provision prohibiting special legislation. The Act authorized consolidation of fire protection services within a municipality into a single fire protection district for the purpose of remedying perceived dangers of multiple fire protection districts serving one municipality.²²⁹ The Act was applicable to municipalities within counties having populations of more than 600,000 people but less than 1,000,000 people.²³⁰ The only county in Illinois fitting this population classification was DuPage County.

The petitioners, fire protection districts, challenged the population provision of the Act. The petitioners argued that the population classification was not based on any rational difference of situation in DuPage County, nor was it rationally related to the object and purpose of the legislation.²³¹ The petitioners claimed that although DuPage County was the only county in Illinois falling into this population category, municipalities in other counties

222. *Id.* at 876, 479 N.E.2d at 491.

223. ILL. CONST. art. IV, § 13.

224. *Id.* The special legislation section states, in relevant part: "[t]he General Assembly shall pass no special or local law when a general law is or can be made applicable." *Id.*

225. See *Gaca v. City of Chicago*, 411 Ill. 146, 148-49, 103 N.E.2d 617, 619 (1952) (referring to the same provision in the 1870 Illinois Constitution).

226. *Bridgewater v. Hotz*, 51 Ill. 2d 103, 112, 281 N.E.2d 317, 322 (1972).

227. 111 Ill. 2d 373, 489 N.E.2d 1385 (1986).

228. ILL. REV. STAT. ch. 127½, para. 38.2a (1985).

229. *Belmont Fire*, 111 Ill. 2d at 376, 489 N.E.2d at 1386.

230. See ILL. REV. STAT. ch. 127½, para. 38.2(a) (1985).

231. *Belmont Fire*, 111 Ill. 2d at 377, 489 N.E.2d at 1387.

also were being served by multiple fire protection districts.²³²

The Illinois Supreme Court held that the Act violated the special legislation provision.²³³ The court reasoned that there was no substantial difference between DuPage County's multiple fire district situation and other counties with municipalities having multiple fire protection districts.²³⁴ On this basis, the court held that there was no reasonable basis for the population classification in the legislation.²³⁵

Furthermore, the court in *In re Belmont Fire Protection District* found that the population classification did not bear a rational relationship to the purpose of the Act and the evil it sought to correct.²³⁶ The court was unable to find a rational relationship between the requirement that a county have a population of 600,000 to 1,000,000 and the desirability of consolidating fire protection districts within a given municipality into a single fire protection district.²³⁷ Because the population classification of the Act was arbitrary and unreasonable, the court held that it violated the special legislation provision of the Illinois Constitution.²³⁸

VII. LEGISLATION

During the *Survey* year, the Illinois General Assembly passed several bills pertaining to state and local governments. Two pieces of legislation are discussed in this article; one concerning enterprise zones and the other concerning public employees' workers compensation claims.

In Public Act 84-166, which was approved and became effective August 16, 1985, the General Assembly created "An Act in Relation to Enterprise Zones" (the "Act").²³⁹ The Act amends a number of Illinois statutes in order to create financial incentives for businesses to locate in designated areas in Illinois.²⁴⁰

The first section of the Act amends paragraph 8-11-2 of the Illinois Municipal Code.²⁴¹ Paragraph 8-11-2 provides that municipalities may tax "gross receipts" of public utilities. The

232. *Id.* at 381, 489 N.E.2d at 1389.

233. *Id.* at 386, 489 N.E.2d at 1391.

234. *Id.* at 382, 489 N.E.2d at 1389.

235. *Id.* at 383, 489 N.E.2d at 1390.

236. *Id.*

237. *Id.* at 383-84, 489 N.E.2d at 1390.

238. *Id.* at 386, 489 N.E.2d at 1391.

239. 1985 Ill. Laws 84-166.

240. *Id.*

241. ILL. REV. STAT. ch. 24, para. 8-11-2 (1983).

amendment provides that a municipality, by majority vote of its corporate authorities, may elect to exclude from "gross receipts" the consideration received by public utilities from business enterprises that are exempt under the Act.²⁴² The amendment further explains that in order for a business enterprise to be eligible for exemption, it must either make investments that in effect create at least 200 full-time jobs in Illinois or make investments that cause the retention of at least 2,000 full-time jobs in Illinois.²⁴³ The business enterprise, however, must also be located in an enterprise zone, as established by the Illinois Enterprise Zone Act,²⁴⁴ and certified by the Department of Commerce and Community Affairs (the "Department").²⁴⁵ The second section of the Act amends the Illinois Enterprise Zone Act²⁴⁶ to provide that no more than twelve Enterprise Zones may be certified by the Department in the calendar year 1985.²⁴⁷

The third section of the Act amends "An Act Concerning Public Utilities," an act which subsequently has been retitled "The Public Utilities Act,"²⁴⁸ to provide that a public utility may not pass on municipal taxes imposed upon the public utility to the business enterprise that qualifies as exempt.²⁴⁹ The amendment also repeats the requirements for a business enterprise to qualify as exempt from charges added to utility bills as a "pass-on" of the municipal and state utility taxes.²⁵⁰

The fourth section of the Act amends that section of the Illinois Income Tax Act²⁵¹ which provides an investment credit for taxpayers who invest in property within an enterprise zone. The amendment permits a credit for partnerships and corporations that have made an election under section 1362 of the Internal Revenue Code.²⁵² If the credit exceeds the party's tax liability for that year,

242. ILL. REV. STAT. ch. 24, para. 8-11-2(4)(d), (e) (1985).

243. *Id.*

244. ILL. REV. STAT. ch. 67 $\frac{1}{2}$, paras. 601-617 (1985).

245. ILL. REV. STAT. ch. 24, para. 8-11-2(4)(e) (1985).

246. ILL. REV. STAT. ch. 67 $\frac{1}{2}$, paras. 601-617 (1985).

247. *Id.* at para. 608(d). Section (d) has been subsequently amended. The amended section provides that "[t]he Department may also designate up to 2 additional Enterprise Zones outside the regular application cycle if warranted by the extreme economic circumstances as determined by the Department." *Id.*

248. "An Act Concerning Public Utilities" was repealed by Public Act 84-617, § 6, and reenacted and renumbered in the same form by Public Act 84-617, § 1. ILL. REV. STAT. ch. 111 $\frac{2}{3}$, paras. 1-101 to 14-110 (1985).

249. ILL. REV. STAT. ch. 111 $\frac{2}{3}$, paras. 9-222, 9-222.1 (1985).

250. *Id.* at para. 9-221.

251. ILL. REV. STAT. ch. 120, paras. 1-101 to 17-701 (1985).

252. *Id.* at para. 2-201(h)(1).

the excess may be carried forward and applied to the party's tax liability of the five taxable years that follow.²⁵³

Also within the fourth section, the Act provides for a jobs tax credit for taxpayers conducting trades or businesses in an enterprise zone. Specifically, the Act allows for a \$500 credit per "eligible employee" hired to work in the enterprise zone.²⁵⁴ The Act defines an "eligible employee" as an employee who is certified by the Department of Commerce and Community Affairs as a "dislocated worker" pursuant to Title III of the Job Training Partnership Act,²⁵⁵ one who is hired after the enterprise zone was designated or the business was located in the enterprise zone, and one who is employed in the enterprise zone for at least thirty hours per week. The Act requires that the taxpayer hire five "eligible employees" to work in the enterprise zone for at least 180 consecutive days.²⁵⁶ If the credit exceeds the taxpayer's tax liability for that year, it may be carried forward for the five taxable years that follow.²⁵⁷

The fifth section of the Act amends the Retailers' Occupation Tax Act.²⁵⁸ The amendment provides that proceeds from the sale of building materials by a retailer whose place of business is within a county or municipality with an enterprise zone, to a purchaser who will use the materials in real estate in the enterprise zone, is exempt from municipal and county retailers' occupation taxes.²⁵⁹

The final three sections of the Act amend the Messages Tax Act,²⁶⁰ the Gas Revenue Tax Act,²⁶¹ and the Public Utilities Revenue Act.²⁶² The amendments exclude from "gross receipts" the consideration received from business enterprises that qualify for the public utilities exemptions.²⁶³

The objective of this legislation is to exempt from taxation utilities servicing business enterprises which make investments that either create or retain jobs in Illinois. Because, as a practical matter, utilities' cost increases and taxes are sometimes passed onto the utilities consumer, a utilities tax exemption will benefit those utility

253. *Id.*

254. *Id.* at para. 2-201(i).

255. 29 U.S.C. §§ 1651-1658 (1982).

256. ILL. REV. STAT. ch. 120, para. 2-201(i) (1985).

257. *Id.*

258. *Id.* at para. 440.

259. *Id.* at paras. 441, 444k.

260. *Id.* at paras. 467-467.15.

261. *Id.* at paras. 467.16-30.

262. *Id.* at paras. 468-481a.

263. *Id.* at paras. 467.1, 467.16, 468.

users who create or retain jobs. In anticipation of this, the third section of this Act prohibits the passing on of municipal taxes from the utility to a business enterprise which qualifies as exempt under the Act.

The second piece of legislation relating to state and local governments passed during the *Survey* year is entitled "An Act to Amend the Law Concerning Matters Related to the Employment of State Employees" (the "Act").²⁶⁴ The Act amends the Civil Administrative Code of Illinois,²⁶⁵ the Personnel Code²⁶⁶ and "An Act in Relation to State Finance."²⁶⁷ The Act provides the Department of Central Management Services with more authority to handle workers' compensation claims.

The first section of the Act amends the Civil Administrative Code of Illinois to empower the Department of Central Management Services to "[e]stablish rules, procedures and forms" to be utilized in paying workers' compensation claims.²⁶⁸ This amendment also grants the Department of Central Management Services the authority to evaluate and determine the compensability of any claims.²⁶⁹

The next section of the Act amends the Personnel Code²⁷⁰ to exempt hearing officers of the Human Rights Commission from jurisdictions A, B, and C of the Personnel Code.²⁷¹ The Act also removes all unskilled positions from partial exemption from jurisdictions A, B, and C of the Personnel Code.²⁷² Additionally, in this section, the Act amends the Personnel Code to provide that the rules promulgated by the Director of the Department of Central Management Services shall have the force and effect of law merely by complying with requirements of the Illinois Administrative Procedure Act and filing with the Secretary of State.²⁷³ In accordance with this change, the Act deletes the previous extensive

264. 1985 Ill. Laws 84-243.

265. ILL. REV. STAT. ch. 127, paras. 1-36.3 (1985).

266. *Id.* at paras. 63b101-63b119j.

267. *Id.* at paras. 137-167.

268. *Id.* at para. 63b4(j).

269. *Id.*

270. *Id.* at paras. 63b101-63b119j.

271. *Id.* at para. 63b104c(19). The Department of Central Management Services has three areas of personnel jurisdiction: Jurisdiction A is for "classification and compensation of positions in the State service," Jurisdiction B is for "positions in the State service to which persons must hold appointments on the basis of merit and fitness," Jurisdiction C is for "conditions of employment of State service." *Id.* at para. 63b104a.

272. *Id.* at para. 63b104d(4). *See supra* note 271.

273. ILL. REV. STAT. ch. 127, at para. 63b108 (1985).

procedure by which such rules became law.²⁷⁴

The final section of the Act amends "An Act in Relation to State Finance"²⁷⁵ to permit the Department of Central Management Services to transfer any amounts appropriated for the payment of workers' compensation claims to any other "expenditure object" when the amounts exceed the amount necessary to pay the claims.²⁷⁶ The Act authorizes the Department of Central Management Services to handle workers' compensation claims: a measure which will streamline state government expenses.

Throughout several cases in this article, the Illinois courts' objectives have been to control rising costs and liabilities of governmental units. The Act also attempts to reduce costs by authorizing the Department of Central Management Services to establish rules for more efficient administration of workers' compensation claims. The central processing and initial evaluation of claims should expedite processing of such claims. The centralized establishment and implementation of uniform rules and procedures, to be used by all state agencies in the processing of workers compensation claims, should result in more consistent decisions regarding claims. In sum, the amendments should improve the administration of worker's compensation claims and simultaneously reduce costs.

VIII. CONCLUSION

During the *Survey* year, the Illinois Courts and General Assembly addressed a number of issues affecting state and local governments. The courts and legislature considered governmental immunities, municipal issues, rights and benefits of public employees, enterprise zones, and a number of constitutional issues. Although the issues the courts and legislature addressed varied greatly, the law created has a consistent theme. The courts and legislature repeatedly sought to reduce costs for state and local governments, while encouraging the efficient provision of governmental services.

274. *Id.*

275. *Id.* at paras. 137-1676.

276. *Id.* at para. 149.2.

