SURVEY OF ILLINOIS LAW: LOCAL GOVERNMENT LAW

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I. INTRODUCTION

The following are summaries of recent developments in the practice area of Local Government Law. This survey includes updates to and interpretations of the Freedom of Information Act and the Open Meetings Act. Also summarized are recent Illinois decisions, Federal decisions, changes to Illinois Complied Statutes, and Illinois Administrative Rules, that relate to the practice of Local Government Law.

II. FREEDOM OF INFORMATION ACT (FOIA) DEVELOPMENTS

A. No attorney fees for not-for-profit organizations who make FOIA requests and prevail.

1. Uptown People's Law Center v. Department of Corrections

This case is an exception to the general rule that Plaintiffs who *prevail* in a FOIA proceeding under 5 ILCS 140/11(i) *shall* be awarded reasonable attorneys' fees and costs.[1] Here, Uptown People's Law Center, a not-for-profit organization that represents prisoners regarding conditions of confinement, requested records from the Illinois Department of Corrections (IDOC).[2] After Uptown commenced the action in the trial court, IDOC provided the records to Uptown.[3] Since the records were received, the trial court dismissed the case as moot and ruled that Uptown was not entitled to attorney fees under the statute.[4] The court conducted a two part analysis: (1) the court determined whether the term prevail included a win without a

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1. *See generally* Uptown People's Law Center v. Dep't of Corrections, 2014 IL App (1st) 130161; *see also* 5 ILL. COMP. STAT. 140/11(i) (2014).
2. *Uptown People's Law Center*, 2014 IL App (1st) 130161, ¶ 3.
3. *Id*. at ¶ 1.
4. *Id*.

court ordered win, and (2) whether a non-for-profit can recover attorney fees in a FOIA case.[5]

Looking at the legislative history and comparing the Illinois FOIA statute to the federal statute, the court determined that prevail is a general term, which encompasses winning without a court order.[6] Applying that ruling to the facts of the case, Uptown prevailed even though it received records responsive to its FOIA request without a court ordering the Defendant, IDOC, to do so.[7]

The court opined that the purpose of the attorney fee provision was to remove the burden of legal fees incurred in enforcing FOIA requests.[8] The court averred that such fees did not provide any barrier to a pro se attorney making and/or enforcing a FOIA request because "a lawyer representing himself does not incur legal fees," following the reasoning from the Illinois Supreme Court ruling in *Hamer v. Lentz*.[9] Using the aforementioned ideas, the appellate court opined that since Uptown was a not-for-profit organization, and its attorneys were salaried employees, Uptown was not required to spend additional funds specifically for the purpose of pursuing FOIA requests.[10]

I disagree with the court's logic. A lawyer, or any individual's, time is worth money to an individual and to an organization. The Uptown attorneys could have been using the time they spent pursuing the FOIA request to further other Uptown organizational goals, thus, Uptown loses this value, when it is not reimbursed for its attorneys' time.

Rule of law to follow: a Plaintiff can *prevail* under FOIA without a court order, and a not-for-profit organization cannot recover attorney fees under FOIA even if it prevails.

B. FOIA Requests for Compilations of Public Records Will Not Be Granted

1. Chicago Tribune Co. v. Department of Financial and Professional Regulation

This case is an illustration of the general principal that FOIA requests are for *public records*, as opposed to any information the public body possesses.[11] The Chicago Tribune requested that the Department of Financial and Professional Regulation "disclose the number of initial claims

5. *Id*.
6. *Id*. at ¶¶ 6–21.
7. *Id.* at ¶¶ 20–21.
8. *Id.* at ¶ 23.
9. *Id*. at ¶ 23 (citing Hamer v. Lentz, 132 Ill. 2d 49, 51, 547 N.E.2d 191, 192 (1989)).
10. *Id*. at ¶ 25.
11. *See* Chicago Tribune Co. v. Dep't of Fin. and Prof'l Reg., 2014 IL App (4th) 130427, ¶ 20.

received by the Department against multiple named physicians licensed by the Department."[12] The Department denied the Tribune's request.[13] Public records are defined by FOIA as:

> all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.[14]

The court opined that the Tribune did not seek production of public records, but actually requested the Department to perform a review of its investigative files and prepare a tally as to the number of initial claims made against certain license holders.[15] The court relied on the *Kenyon* case, which held that "a request to inspect or copy must reasonably identify a public record and not general data, information or statistics."[16] The court also cited Section 1 of FOIA, which provides: "This act is not intended to create an obligation on the part of any public body to maintain or prepare any public record which was not maintained or prepared by such public body at the time when the Act becomes effective."[17] The court likens the Tribune's FOIA request to an interrogatory request in the discovery process, and opines that the Department is not obligated to respond to such a general request for information.

Rule of law to follow: A public body is not legally obligated to respond to a FOIA request if the request asks for a compilation of information that is not contained in an existing public record.

C. Confidentiality Provisions of Settlement Agreements vs. FOIA

1. Kalven v. City of Chicago

Plaintiff Jamie Kalven, a reporter in the midst of publishing articles on police misconduct, submitted two FOIA requests to the Chicago Police Department (CPD).[18] One asked for Repeater Lists (RLs), or lists of

12. *Id.* at ¶ 1.
13. *Id*.
14. *Id*. at ¶ 31 (quoting 5 ILL. COMP. STAT. 140/2(c) (2010)).
15. *Id*. at ¶ 32.
16. *Id*. at ¶ 33 (citing Kenyon v. Garrels, 184 Ill. App. 3d 28, 32, 540 N.E.2d 11, 13 (1989)).
17. *Id.* at ¶ 20 (quoting 5 ILL. COMP. STAT. 140/1 (2010)).
18. Kalven v. City of Chicago, 2014 IL App (1st) 121846, ¶ 2.

Chicago police officers who had the most misconduct complaints, while the other asked for the complaint register files (CRs)—which related to CPD's completed investigations of five particular officers.[19] In general, a CR file consisted of the citizen's complaint and the documents created during the investigation of the complaint.[20] CPD denied the requests, because the CRs are records relating to a public body's adjudication of employee grievances or disciplinary cases under section 7(1)(n) of FOIA.[21] The court opined that CRs are not included in this definition, as they are not "related to" adjudication, even though the CR may lead to disciplinary action later.[22]

Alternatively, CPD denied the requests because CRs contained "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed or policies or actions are formulated" under section 7(1)(f) of FOIA.[23] Specifically, CPD argued that the entire CR should be exempt because it contained recommendations regarding whether an officer should be disciplined.[24] The court opined that the trial court could determine which portion of the CR was exempt under this provision on remand.[25]

When examining whether or not the RLs were exempt from disclosure the court noted that the RLs are simply summaries of the CRs, prepared for discovery purposes in an unrelated case.[26] Therefore, the court noted that the RLs are not exempt for the same two reasons the CRs were not exempt, the adjudication and recommendation exemptions.[27] However, the court opined that even though the records were not created in the ordinary course of business, the records are included in the FOIA definition of records found in section 2(c) that lists records "having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body."[28] There is no exemption in FOIA for records prepared by a public body for the sole purpose of litigation or requirement that the records be produced during in the ordinary course of business.[29]

Rule of Law to Follow: Records prepared in the course of litigation are not exempt and must be provided in response to a FOIA request.

19. *Id*.
20. *Id*. at ¶ 3.
21. *Id*. at ¶ 11.
22. *Id*. at ¶ 22.
23. *Id*. at ¶ 23.
24. *Id*. at ¶ 24.
25. *Id*. at ¶ 25.
26. *Id*. at ¶ 27.
27. *Id*.
28. *Id*. at ¶¶ 28–29 (quoting 5 ILL. COMP. STAT. 140/2(c) (2010)).
29. *See* 5 ILL. COMP. STAT. 140/1-140/11.5 (2014).

D. Confidentiality Provisions of Settlement Agreements vs. FOIA

Daniel Kelley submitted a FOIA request on behalf of the Belleville News-Democrat, seeking all of the settlement agreements involving St. Clair County (the County) during the calendar year 2013.[30] St. Clair County responded with some redacted agreements pursuant to section 7(1)(b) of FOIA—which exempts *private information*—and declined to produce others pursuant to section 7(1)(c) of FOIA—which exempts *personal information*.[31]

Private information is defined in FOIA as "unique identifiers, including a personal social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, personal email addresses, home address and personal license plates."[32] Personal information is defined in FOIA as "information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy (information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information)."[33] Further, the County stated that disclosure in response to a FOIA request would be in direct violation of the confidentiality agreement entered into by the parties to the settlement.[34]

The court noted that the legislative history of the bill that added the section regarding settlement agreements to FOIA, specifically discussed this same issue. Specifically, the legislative history included the idea that public bodies are severely limited and almost prohibited from including confidentiality provisions in their settlement agreements in order to avoid disclosure of the settlement agreement pursuant to FOIA.[35] The court found that the confidentiality provisions in the settlement agreements are not enforceable and, therefore, do not prevent disclosure under the FOIA.[36] The court based this decision on other jurisdictions' holdings that Open Records Laws trump a settlement agreement provision; Illinois' more general holdings that contract provisions that violate a statute contravene public policy and are unenforceable; and Illinois' more specific holdings

30. ILL. ATT'Y GEN., PUBLIC ACCESS OPINION 14-004, FREEDOM OF INFORMATION ACT: DISCLOSURE SETTLEMENT AGREEMENTS 1 (2014).
31. *Id*. at 2.
32. 5 ILL. COMP. STAT. 140/2(c-5) (2014).
33. *Id*. at §§ 140/7(1)(b), (c).
34. ILL. ATT'Y GEN., *supra* note 30, at 2–3.
35. *Id*. at 4.
36. *Id*. at 7.

authorizing the disclosure of settlement agreements that contained confidentiality restrictions.[37]

In addition, the court noted that the exemption for personal information under section 7(1)(c) of FOIA was not applicable to the case at hand, because the County had failed to demonstrate that any highly sensitive information regarding the harassment allegations was contained in the settlement agreements that could cause an unwarranted invasion of privacy to the victims.[38]

Rule of Law to Follow: Confidentiality provisions of settlement agreements are not enforceable to avoid an otherwise valid FOIA request.

E. Employment Applications and Resumes Will Be Disclosed Under FOIA

William Buell submitted a FOIA request seeking the completed employment application and resume for James Bernahl for the position of Assistant Director of Public Works and Engineering.[39] The Village of Winnetka (Village) denied said request on the basis of 7(1)(c) of FOIA, the personal information exemption.[40]

7(1)(c) of FOIA includes the following in the description of personal privacy: "The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."[41] The Village argued that because the resume and application do not pertain to public duties, they are *per se* exempt from disclosure, but the court opined that was not the correct reading of the statute.[42] Section 7(1)(c) provides that information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy for purposes of balancing between the right to privacy and any legitimate public interest.[43] Described another way, the statute has categorized the disclosure of information that bears on the public duties of public employees and officials, as a disclosure that is not an invasion of personal privacy and, therefore, not personal information exempt from disclosure under 7(1)(c).

Hence, information that bears on the public duties of public employees and officials is not exempt under FOIA, and should be disclosed in response to a FOIA request. The court averred that the resume and application contain the education, training, and experience that qualify Bernahl to serve

37. *Id*. at 6–7.
38. *Id*. at 7–9.
39. ILL. ATT'Y GEN., PUBLIC ACCESS OPINION 14-015, FREEDOM OF INFORMATION ACT: DISCLOSURE OF RESUME AND JOB APPLICATION OF PUBLIC EMPLOYEE 1 (2014).
40. *Id*. at 2.
41. 5 ILL. COMP. STAT. 140 7(1)(c) (2014).
42. ILL. ATT'Y GEN., *supra* note 39, at 4.
43. *Id*. at 5–6.

in his position with the Village.[44] Therefore, these are all factors that bear on his ability to perform his public duties satisfactorily—which means the documents should be disclosed under FOIA.[45] In addition, the court noted, there is a compelling interest in the disclosure of a public employee's credentials in order to assess his or her qualifications for public employment, and to determine whether the hiring complied with applicable laws or rules and regulations.[46]

As there was no privacy interest in the type of information sought, pursuant to the statute, the public interest clearly outweighs the individual's privacy interest.[47] With this determination, the court ordered the Village to disclose the resume and application in a redacted format, without the private information exempt from disclosure under 7(1)(b) of FOIA.[48] Specifically, Bernahl's personal home address, home phone number, personal e-mail address, and signature would be redacted.[49]

Rule of Law to Follow: Employment applications and resumes of individuals employed by public bodies are subject to disclosure under FOIA, so long as they are redacted of private information

F. Voluminous FOIA Requests and FOIA Requests for Information Available Online

The FOIA was amended to add both a definition of voluminous requests and a new section regarding the procedures by which public bodies will process them.[50] Voluminous request means a request that:

> (i) includes more than 5 individual requests for more than 5 different categories of records or a combination of individual requests that total requests for more than 5 different categories of records in a period of 20 business days; or (ii) requires the compilation of more than 500 letter or legal-sized pages of public records unless a single requested record exceeds 500 pages.[51]

The definition excludes a request made by news media, non-profit, scientific, or academic organizations, if the principal purpose of the request is: "(1) to access and disseminate information concerning news and current

44. *Id*. at 6.
45. *Id*.
46. *Id*. at 12.
47. *Id*.
48. *Id*. at 10–11.
49. *Id*.
50. 2014 Ill. Legis. Serv. P.A. 98-1129 (H.B. 3796) (WEST) (eff. Dec. 3, 2014); *see also* 5 ILL. COMP. STAT. 140/3.6, 140/2(h) (2014).
51. *5* ILL. COMP. STAT. 140/2(h) (2014).

or passing events; (2) for articles of opinion or features of interest to the public; or (3) for the purpose of academic, scientific, or public research or education."[52]

A high level overview of the procedures concerning voluminous requests are as follows:

> 1) A public body must respond within 5 business days to a voluminous request to indicate that the public body is treating the request as a voluminous one and why;
>
> 2) the requester has 10 days to respond whether the requester will amend the request to be non-voluminous;
>
> 3) if the requester does not respond within 10 days, the public body will respond and could charge fees for responding;
>
> 4) the public body has 5 days from the receipt of the requester's response or from the last day the requester has to respond to comply with the request;
>
> 5) the public body may extend the time to respond to the request by 10 days; and
>
> 6) if the voluminous request is for electronic records and those records are not in PDF format, the public body may charge fees as outlined in a fee schedule in the statute.[53]

In addition to addressing voluminous requests, procedures were added in section 8.5 of FOIA concerning FOIA requests for public records contained online. Section 8.5 provides: Records maintained online.

> (a) Notwithstanding any provision of this Act to the contrary, a public body is not required to copy a public record that is published on the public body's website. The public body shall notify the requester that the public record is available online and direct the requester to the website where the record can be reasonably accessed.
>
> (b) If the person requesting the public record is unable to reasonably access the record online after being directed to the website pursuant to subsection (a) of this Section, the requester may re-submit his or her request for the record stating his or her

52. *Id*.
53. *Id*. at § 140/3.6.

> inability to reasonably access the record online, and the public body shall make the requested record available for inspection or copying as provided in Section 3 of this Act.[54]

Practice pointers: If you represent a client who makes or responds to FOIA requests, be sure to review the new rules regarding voluminous requests that were added to the FOIA. In addition, a public body may be able to eliminate providing paper copies of information that is available on the public body's website.

III. OPENING MEETINGS ACT DEVELOPMENTS

A. Extension of Statute of Limitations for OMA Violations

Public Act 99-0402 amends the Open Meetings Act, by extending the Statute of Limitations for a violation of the Open Meetings Act (OMA) from sixty days after the alleged violation to within sixty days of the discovery of the violation, but not to exceed two years after the alleged violation.[55]

B. Prerequisites to Make a Public Comment at an Open Public Meeting: Home Addresses

A decision, pursuant to the OMA, affecting the routine and customary procedures of many public bodies' meetings, arose from the public comment portion of a meeting of the Lemont Village Board (Board) on April 14, 2014.[56] Ms. Janet Hughes (Hughes) expressed a desire to make a public comment, but was told that she—and anyone else who would like to make a public comment that evening—must provide their full home address prior to doing so.[57] She eventually provided her address, but did so under pressure from the Board's attorney and the Mayor of Lemont.[58] Hughes alleged a violation of section 2.06(g) of the OMA which provides: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body."[59] The Board admitted it did not have a written rule that required members of the public

54. *Id*. at §§ 140/8.5(a)-(b).
55. 2015 Ill. Legis. Serv. P.A. 99-402 (H.B. 175) (eff. Aug. 19, 2015); *see also* 5 ILL COMP. STAT. 120/3.5(a) (2014).
56. ILL. ATT'Y GEN., PUBLIC ACCESS OPINION 14-009, OPENING MEETINGS ACT: INFORMATION REQUIRED OF SPEAKERS WISHING TO PROVIDE PUBLIC COMMENT 1 (2014).
57. *Id*.
58. *Id*. at 1–2.
59. *Id*. at 2.

to provide their address, but that individual commenters had provided their full address out of "custom and practice."[60]

Not only did the court find that the Board violated the OMA in this case, because there was no written rule in place that required the public to provide a full address prior to commenting, but the court, also, ruled on the address question more generally as well.[61] Specifically, the court opined that even if the Board had established a rule requiring a commenter to provide an address prior to commenting, such a rule would exceed the scope of rulemaking contemplated by section 2.06(g) of the OMA.[62] Further, it would most likely produce a chilling effect on individuals who wish to speak at meetings.[63]

I agree that a home address does not further the purpose of "time, place and manner" restrictions that a public body may place on speech at their meetings in order to further a significant governmental interest. If the true purpose of the address requirement is to find out if the person commenting lives in the jurisdiction of the public body, and to enable the Board to follow up with individuals with concerns, perhaps there is another manner in which this goal could be accomplished. The address could be collected voluntarily (not required but requested) in writing prior to the comments and not announced verbally on a publically available video and perhaps other contact information could be collected for follow up purposes as well (email addresses, phone numbers).

Rule of law to follow: The provision of a home address to the public body cannot be a prerequisite for a member of the public to provide comment at an open meeting.

C. Prerequisites to Make a Public Comment at an Open Public Meeting: Notice

This decision indicates that a public body's five working day notice requirement for members of the public, prior to addressing the board with comments, was not a reasonable rule and was a violation of the OMA.[64] Mr. Grogan was not permitted to address the McLean County Board (Board) because he sent his written notice four working days prior to the Board meeting, instead of five working days prior to the meeting.[65] The

60. *Id*. at 5.
61. *Id*. at 6–7.
62. *Id*. at 7.
63. *Id*.
64. ILL. ATT'Y GEN., PUBLIC ACCESS OPINION 14-012, OPENING MEETING ACT: RULES FOR PUBLIC COMMENT 1 (2014).
65. *Id*. at 7.

five working day notice requirement was promulgated by the board as a rule for public comment.[66]

However, the court opined that not only did this rule fail to further a significant governmental interest that did not outweigh a member of the public's right to address public officials, as provided in section 2.06(g) of the OMA, but also the rule was not practical.[67] The court explained that the Board must post its meeting agenda just forty-eight hours before the meeting, yet a member of the public wishing to comment must request in writing 5 working days before the meeting.[68] As a practical matter, the member of the public would have no way of knowing the topics of the meeting prior to the comment request deadline.[69] Further, the court averred "the rule appears to unreasonably restrict members of the public from exercising their statutory right to address the Board."[70]

Rule of law to follow: A public body cannot require members of the public to submit a written request prior to forty-eight hours before the meeting as a prerequisite to provide public comment at the meeting.

D. Amendments to Meeting Agendas

This opinion provided guidance on an issue not specifically addressed in the OMA, amendments to meeting agendas by public bodies.[71] Mr. Michael Greenfield requested review of an action by the St. Clair Township Board (Board) amending its meeting agenda for its January 28, 2014 meeting. He requested a review because the amendment took place less than forty-eight hours prior to the meeting. The amendment removed two items and moved the items to the closed Executive Session portion of the meeting.[72] Greenfield alleges that revising an agenda less than forty-eight hours prior to the meeting is not permissible under section 2.02 of the OMA.[73] However, the court noted that section 2.02(a) of the OMA provides that the Board is required to post an agenda at least forty-eight hours in advance of the meeting—which it did.[74] Further, the court observed that section 2.02(c) of the OMA provides that the "any agenda required under this Section shall set forth the general subject matter of any

66. *Id*. at 5.
67. *Id*. at 6.
68. *Id*.
69. *Id*.
70. *Id*.
71. ILL. ATT'Y GEN., PUBLIC ACCESS OPINION 14-003, OPENING MEETING ACT: AMENDING AGENDA DURING 48-HOUR POSTING PERIOD 3 (2014).
72. *Id*. at 1.
73. *Id*.
74. *Id*. at 3.

resolution or ordinance that will be the subject of final action at the meeting."[75]

The allegation from Greenfield was not that the Board took final action on an item that was removed from the agenda, but that two action items were removed from the agenda.[76] The court found that OMA does not require amendment of the agenda or notice of closing meeting agenda items.[77] The court opined that the removal and amendment to the agenda by the Board provided more information and offered greater transparency to the public.[78]

Rule of law to follow: Public bodies can amend a meeting notice by removing items from the agenda less than forty-eight hours prior to a meeting in compliance with the OMA.

IV. ILLINOIS CASES

A. Effect of a Nonattorney's Appearance at an Administrative Hearing on Behalf of a Corporation

This case illustrates the principle that it is sometimes almost never too late to get relief in the courthouse, unless you are a nonattorney trying to represent a corporation. About fourteen years ago, Stone Street Partners, LLC (Stone Street) was fined by an administrative hearing officer.[79] Stone Street waited to challenge the fine until eleven years later, because it had never received notice of the proceeding.[80] Stone Street also presented evidence that a person named Keith Johnson, a nonattorney, not only appeared at the hearing purporting to represent Stone Street, but filed a written appearance on its behalf.[81]

There was no factual dispute that the City improperly served Stone Street, but there was dispute as to the impact of Stone Street's *appearance*; whether or not by this appearance Stone Street waived any objection to service.[82] After reviewing various arguments from the city, the ISBA, and the Illinois Attorney General, the court decided that representation of corporations at administrative hearings, particularly hearings like this one which involve testimony from sworn witnesses, interpretation of laws and ordinances, and can result in the imposition of punitive fines, must be made

75. *Id*.
76. *Id*. at 1.
77. *Id*. at 4.
78. *Id*. at 5.
79. Stone Street Partners, LLC v. City of Chicago Dept. of Admin. Hearings, 2014 IL App (1st) 123654, ¶ 1.
80. *Id*.
81. *Id*. at ¶ 4.
82. *Id*. at ¶ 14.

by a licensed attorney at law.[83] The ISBA aptly points out that the nonattorney's role in this hearing was actually the unauthorized practice of law.[84]

The court also notes that the Illinois Supreme Court recently reaffirmed a rule dating back to the 1500s, that a corporation must be represented at legal proceedings.[85] The court applied this holding to the present case, and administrative hearings in general, reasoning that administrative agencies have the same powers as regular courts to punish, fine, and transfer property.[86] Thus, the current nonattorney's appearance at the hearing was a nullity. Therefore, the court opined that Stone Street did not waive its objection to service, Stone Street was improperly served, and some relief will follow.[87]

Rule of Law to follow: For administrative hearings, a nonattorney's appearance for a corporation will not be proper and an attorney's appearance will be required for any substantive proceeding to have legal effect going forward.

B. Municipal Bonds: Completion and Payment Provisions

In *Lake County Grading Co. v. Village of Antioch*, the Illinois Supreme Court ruled that the Village of Antioch (the Village) was not liable to a subcontractor for breach of contract.[88] The Plaintiff subcontractor, Lake County Grading Company, LLC (Grading), alleged that the Village breached the contracts with the general contractor, Neumann Homes, Inc. (Neumann).[89] Grading completed the work, but Neumann declared bankruptcy and did not pay Grading in full.[90]

The parties agreed that the bonds provided by Neumann did not contain specific "payment bond" language.[91] "Payment bond" language expressly guarantees payment to subcontractors for labor or materials.[92] "Completion bond" language provides that if the contractor does not complete a project, the surety will pay for its completion.[93]

Grading sought to recover from the Village, under the theories that it was a third-party beneficiary of the contracts between the Village and

83. *Id*. at ¶ 16.
84. *Id*.
85. *Id*. at ¶ 17.
86. *Id*. at ¶ 19.
87. *Id*. at ¶¶ 21–22.
88. Lake County Grading Co. v. Village of Antioch, 2014 IL 115805, ¶ 38.
89. *Id*. at ¶ 9.
90. *Id*. at ¶ 8.
91. *Id.* at ¶ 7.
92. *Id*.
93. *Id*.

Neumann, because the requirements of paragraph one of the Bond Act are read into every public works contract for the benefit of subcontractors.[94] And, moreover, because the surety bonds provided by Neumann did not contain actual language guaranteeing payment to subcontractors, as mandated by the first paragraph of section one of the Bond Act.[95]

The court noted the plain language of section one of the Bond Act stated: "each such bond is deemed to contain the following provisions whether such provisions are inserted in such bond or not."[96] The court notes that section 1 of the Bond Act also continues with language that ensures payment to all persons who have performed labor or provided materials "in the performance of the contract on account of which this bond is given."[97]

Thus, the court concluded, because of the two preceding portions of section one of the Bond Act, the legislature clearly intended for every bond to contain both completion and payment provisions as a matter of law.[98] Therefore, the Village's bonds with Neumann contained both payment provisions, were not insufficient, and did not violate Section 1 of the Bond Act.[99]

Rule of Law to follow: All bonds contain a payment and a completion provision, even if those specific provisions are not written in the bond document.

C. The Illinois Supreme Court's Anti-climactic Ruling on the *Chicago Red Light Camera* Case

The Illinois Supreme Court listened to arguments regarding the appeal of the infamous "Chicago red light camera case," but then dismissed the case for procedural reasons.[100] Specifically, the opinion provided that, two Justices recused themselves and the remaining members of the Court were divided so that it was not possible to secure the constitutionally required concurrence of four judges for a decision.[101] As the opinion explained, the practical effect of a dismissal of this type was the same as an affirmance of the decision by an equally divided court, but the affirmance had no precedential value.[102] Chicagoans will have to live with the appeals court

94. *Id*. at ¶ 9.
95. *Id*.
96. *Id*. at ¶ 25.
97. *Id*.
98. *Id*.
99. *Id*. at ¶ 38.
100. Keating v. City of Chicago, 2014 IL 116054, ¶ 1.
101. *Id*.
102. *Id*.

decision, which opined the red light camera ordinances were valid and constitutional.

D. Enforceability of a Settlement Reached Without Full Authority from the Client

Plaintiff, Jane Meade, alleged she was injured when she fell into a sinkhole and sued the Defendant, City of Rockford.[103] Attorneys for both parties were present in a pretrial settlement conference with the judge.[104] Local Rule 11.03 of Winnebago County circuit court requires parties appearing for pretrial settlement conferences to have settlement authority, which includes the ability to bind the party to an enforceable settlement agreement.[105] During the conference, the attorney for Rockford informed the court that he had authority to offer a settlement of $600,000, the plaintiff accepted and the court docketed the case as settled.[106] However, only five of the twelve members of the Rockford City Council were on the telephone to provide authority to offer the settlement amount.[107] Once the settlement amount was presented to the Council at the next meeting, two members changed their votes, another member was absent, and the vote was seven to five against the settlement amount.[108] Meade then filed a Motion to Enforce the settlement that was reached during the pretrial conference.[109]

Pursuant to the Illinois Municipal Code, the passage of a resolution or motion for the expenditure or appropriation of the city's funds shall require the concurrence of a majority of the members of the city council.[110] The court opined that since the settlement would require the city to pay a monetary amount, the settlement required a majority of the council to vote in favor of the settlement.[111] A City of Rockford Ordinance also provided a specific exception to the Illinois Municipal Code, which would allow the legal director to approve the settlement of lawsuits against the City of Rockford for less than $12,500.[112] The court interpreted the Ordinance as a limited exception to the Illinois Municipal Code's general requirement that settlements must be approved by a concurrence of a majority of the members of the city council.[113] The court noted that the alternative

103. Meade v. City of Rockford, 2015 IL App (2d) 140645, ¶ 3.
104. *Id*. at ¶ 5.
105. *Id*. at ¶ 4.
106. *Id*. at ¶ 5.
107. *Id*. at ¶¶ 5, 7.
108. *Id*. at ¶ 7.
109. *Id*. at ¶ 9.
110. *Id*. at ¶ 10.
111. *Id*. at ¶ 23.
112. *Id*. at ¶ 10.
113. *Id*. at ¶ 27.

interpretation favored by Plaintiff did not apply because that interpretation would indicate that the ordinance conflicted with state law (the Illinois Municipal Code).[114]

The court, also, decided the question of whether city council members are required to vote in accordance with their prior position, as stated in the settlement conference.[115] The court provided academic reasoning, and refuted the plaintiff's argument about judicial admissions, but mostly the court's ruling on this issue is common sense.[116] The Illinois Municipal Code requires a formal vote in order to approve a monetary settlement. A phone conversation with five of the city council's members with the city's attorney, while he is in judicial chambers, is not a formal majority vote, and therefore, would not be significant authority to approve a settlement. Therefore, it seems the members could change their position given in the settlement conference prior to a formal vote since the position at the settlement conference was not a formal position or vote.

In answering the final certified question of whether the court can enforce the settlement in these circumstances, when the city's vote did not approve the settlement, the court makes a very interesting observation in response to one of Plaintiff's arguments. Plaintiff argued that the settlement agreement did not contain any language that could lead her to believe that the city council had to approve the agreement.[117] The court responded "those who enter into agreements with municipalities are charged with knowledge of the statutory requirements that govern such agreements."[118] In this case, that means the Plaintiff—or the Plaintiff's attorney—should have known that any agreement with the city over $12,500 would require approval by a full council vote. That idea is not just an idea, but a state law, found in the Illinois Municipal Code. Ignorance of the law is not an excuse, nor should it be in this case. Since the Illinois Municipal Code does not provide that the council vote must take place after the settlement offer is made, the council could vote prior to a scheduled settlement conference. Thus, a city council could, perhaps, provide settlement authority to its attorney up to a certain dollar amount prior to a settlement conference.

Rule of law to follow: Settlements reached with municipal bodies require approval by a majority of city council members. Plaintiffs should always question the municipal attorney regarding his or her authority to settle and verify the same.

114. *Id*. at ¶¶ 27–28.
115. *Id*. at ¶ 30.
116. *Id*. at ¶¶ 32–33.
117. *Id*. at ¶ 41.
118. *Id*. at ¶ 42.

E. The Tort Immunity Act: Intended Users

Plaintiff, Artenia Bowman, filed suit on behalf of her thirteen year old daughter, Cheneka Ross, against the Chicago Park District (CPD), as the result of an injury Ross sustained at one of CPD's parks.[119] The trial court granted CPD's summary judgment motion, on the basis that Ross was not the intended user of the slide since she was thirteen years old and the slide was intended for children under age twelve.[120] In reaching this decision, the court discussed that CPD is protected, as a local public entity, under the following provision found in section 3-102(a) of the Illinois Local Government and Governmental Employees Tort Immunity Act: "Except as otherwise provided in this Article, a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for the use in the exercise of ordinary care of people whom the entity intended and permitted to use the property."[121]

The relevant section of the CPD Code provides (and has been in effect since 1992): "Playgrounds designated for Persons under Twelve Years of Age. No person the age of twelve years or older shall use playground equipment designed for persons under the age of twelve years."[122] However, the court noted that there was nothing in the CPD Code that designated which parks or which equipment were designed for children under twelve years.[123] The website did not contain such a notation either.[124] Finally, the park itself did not display any signs notifying the public of this rule.[125] The court opines that it is not reasonable for a thirteen-year-old child to look at a slide and wonder whether he or she is the intended user of it.[126] In addition, the court opines that it is CPD's burden to prove it is immune from liability, and that it has failed to cite a case where a child has been charged with the responsibility of knowing municipal ordinances, nor has it offered any proof that users of any age were notified of the age limitations of the park equipment.[127]

Rule of Law to Follow: A local government entity could be immune from liability under the Tort Immunity Act—if citizens are on notice of the intended users of a facility or piece of equipment, and the injured citizen is not the intended user of the facility or piece of equipment.

119. Bowman v. Chicago Park Dist., 2014 IL App (1st) 132122, ¶ 1.
120. *Id*. at ¶ 2.
121. *Id*. at ¶ 48 (quoting 745 ILL. COMP. STAT. 10/3-102(a) (2014)).
122. *Id*. at ¶ 51 (quoting Chicago Park Dist. Code ch. 7, § B(3)(e)).
123. *Id*. at ¶¶ 56, 60.
124. *Id*. at ¶ 56
125. *Id*.
126. *Id*. at ¶ 57.
127. *Id*. at ¶¶ 63–64.

V. ILLINOIS COMPLIED STATUTES AND OTHER RULES

A. Illinois Municipal Code: Non-home Rule Municipalities Can Enforce Ordinance Violations without Circuit Court Assistance

Public Act 99-293 amends the Illinois Municipal Code to give non-home rule municipalities the power to enforce ordinance violations issued by a municipal hearing officer.[128] Specifically, it provides that findings, decisions, and orders by the hearing officer may be enforced by the municipality in the same manner—in accordance with any applicable laws—as a judgment entered by a court of competent jurisdiction.[129] One method of enforcement listed is the lien.[130] The municipality may record a lien against a defendant's real estate, personal estate, or both, and may take action to enforce that lien.[131]

Practice pointer: Notify all non-home rule municipal clients that they can eliminate the extra step of filing for enforcement relief in circuit court and instead can enforce hearing officer's judgments and issue and enforce liens by using municipal resources.

B. Illinois Administrative Code: Local Records Commissions: Disposal and Digitization Updates

The following is a summary of the significant changes to the Local Records Commission's and the Local Records Commission of Cook County's sections of the Illinois Administrative Code. The Local Records Commission of Cook County serves agencies comprising counties of more than three million inhabitants,[132] while the Local Records Commission serves agencies comprising counties of less than three million inhabitants.[133]

Sections 4000.40(c) and 4500.40(c) were both amended to change the time required to submit a Local Records Disposal Certificate to the proper Commission from sixty to thirty days prior to the intended disposal of the records; however, the requirement that the Certificate must be received by the agency prior to disposal remained.[134] Sections 4000.40(e) and

128. 2015 Ill. Legis. Serv. P.A. 99-293 (H.B. 2745) (WEST) (eff. Aug. 6 2015); *see also* 65 ILL COMP. STAT. 5/1-2.2-55(c) (2014).
129. 65 ILL COMP. STAT. 5/1-2.2-55(c) (2014).
130. *Id*.
131. *Id.*
132. ILL. ADMIN. CODE tit. 44, § 4500.10(a) (2014).
133. *Id*. at § 4000.10(a).
134. Kris Stenson, *New Rules for Records Management: What You Need to Know*, ILLINOIS MUNICIPAL REVIEW, (July 2015), http://legislative.iml.org/page.cfm?key=15769&parent=4207; *see also* ILL. ADMIN. CODE tit 44, §§ 4500.40(c), 4000.40(c) (LexisNexis 2016).

4500.40(e) were both amended to provide that if an agency's records were damaged by water, fire, smoke, insects, etc., then the agency may apply to the proper Commission to request permission to dispose of the records early.[135] But, the request may be granted only after a required physical inspection of the damaged records by the Commission.[136]

In addition, sections 4000.40(d) and 4500.40(d) were both amended to provide that if a specific type of records have a scheduled retention schedule of less than one year, only one Local Records Disposal Certificate is required to be submitted per year, even if there is more than one disposal event throughout the year.[137] The code also requires that the schedule of disposal of events for the whole year be delineated with the application for the aforementioned Certificate.[138] Examples of these types of records include: system logs, audit logs, security video, and other records that are usually retained for only a few months.[139]

Sections 4000.50 and 4500.50 were both added to provide the very specific standards for microfilming or electronic microimaging records if the original paper records that are being microfilmed or electronically microimaged are also being disposed of during the process.[140] Prior to the destruction of the original records, the head of each agency shall certify to the Commission that the microfilm copies shall be an adequate substitution for the original records and a Local Records Disposal Certificate shall still be filed with the proper Commission.[141]

Sections 4000.80 and 4500.80 were both added to address the issue of the retention of electronic records regarding the retention period and permanent retention schedules for such records.[142] These new sections include minimum storage system, back up, security, indexing, and external vendor requirements.[143]

Rule to follow: Review the new rules for digitizing original records and electronic records and note the sixty to thirty day change for routine record disposal.

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135. Stenson, *supra* note 134; *see also* ILL. ADMIN. CODE tit. 44, §§ 4500.40(e), 4000.40(e) (LexisNexis 2016).
136. Stenson, *supra* note 134.
137. *Id*.; *see also* ILL. ADMIN. CODE tit 44, §§ 4500.40(d), 4000.40(d) (LexisNexis 2016).
138. Stenson, *supra* note 134.
139. *Id*.; *see also* ILL. ADMIN. CODE tit 44, §§ 4000.50, 4500.50 (LexisNexis 2016).
140. Stenson, *supra* note 134.
141. *Id*.
142. *Id*.; *see also* ILL. ADMIN. CODE tit 44, §§ 4000.80, 4500.80 (LexisNexis 2016).
143. Stenson, *supra* note 134.

C. Illinois Administrative Code: Illinois Wage Payment and Collection Act Updates

The following is a summary of some of the significant changes made by the Illinois Department of Labor to the Illinois Administrative Code provisions that accompany the Illinois Wage Payment and Collection Act, which were effective August 22, 2014.

Employers are now required to notify employees in writing *whenever possible* of the rate of pay and of the time and place of payment at the time of hiring.[144] Expense reimbursement was added to the definition of final compensation.[145]

The time for an employer to answer an employee's filed wage claim was extended from fifteen to twenty days, but if an employer fails to answer the claim or all of the material allegations contained in said claim, any unanswered allegations shall be deemed admitted to be true as of the twenty-first day following notice of the claim.[146] Employers must keep a record of the hours worked for every employee, including exempt employees.[147]

The term *agreement* was amended to a more broad definition which includes the phrasing that an agreement is: "broader than a contract" and "may be reached by the parties without the formalities and accompanying legal protections of a contract and may be manifested by words or any other conduct, such as past practice."[148] Further, the definition of the term *agreement* includes a statement that, "any exchange is not required for an agreement to be in effect."[149] I think this definition is nonsensical and could not be practically applied as it contradicts basic principles of contract law.

In addition, I do not think past practice alone should form a contract. Past practice is an accepted term of art that aids in contract interpretation, but should not be the one and only item that creates a contract. Moreover, the definition specifically provides that "company policies and policies in a handbook create an agreement even when the handbook or policy contains a general disclaimer such as a provision disclaiming the handbook from being an employment contract."[150]

144. Sheryl Jaffee Halpern and Thomas C. Koessl, *Amendments to Illinois Wage Payment and Collection Act Regulations: Big Changes with Little Notice*, MUCH SHELIST, P.C., (Jan. 13, 2015), https://www.muchshelist.com/knowledge-center/article/amendments-illinois-wage-payment-and-collection-act-regulations-big-changes.
145. *Id*.
146. *Id*.
147. *Id*.
148. ILL. ADMIN. CODE tit. 56, § 300.450 (LexisNexis 2016)
149. *Id.*
150. *Id.*

This is not a good provision for employers. Employers should be able to set out guidelines and rules for their workplace in an at will employment state without forming a contract with an employee. Such a disclaimer provision allows employers to distinguish between a general employee handbook for all employees and an employment contract with a specific employee or group of employees.

D. Real Estate Appraiser Licensing Act of 2002: Additional Individuals May Prepare Valuation Waivers

The Real Estate Appraiser Licensing Act of 2002 was amended, by adding a section regarding municipal employees.[151] Specifically, it adds two new groups of individuals who can prepare valuation waivers, in an amount not to exceed $10,000 without an appraisal license.[152] These new groups of individuals include: (1) an employee of a municipality who has completed certain required coursework, or has two years of experience in the real estate field; and (2) a municipal engineer who has completed certain required coursework, or is a registered professional engineer.[153] This legislation reduces the cost of obtaining right-of-ways or temporary easements for a municipality, if the value of the parcel or easement is less than $10,000.[154]

Practice pointer: Municipalities should encourage their engineers or other eligible employees to complete the requirements now found in the Real Estate Appraiser Licensing Act of 2002, so that they are able to complete land valuations for properties less than $10,000 in a less expensive manner.

E. State Revenue Sharing Act: Local Government Distributive Fund

On August 26, 2014, Public Act 098-1052 was enacted, providing much needed relief to municipalities and counties who were frustrated with the State of Illinois repeatedly falling behind on its distribution of state-

151. 2014 Ill. Legis. Serv. P.A. 98-933 (H.B. 5709) (WEST) (eff. Jan. 1, 2015); *see also* 225 ILL. COMP. STAT. 458/5-5(e-5) (2014).

152. 225 ILL. COMP. STAT. 458/5-5(e-5) (2014).

153. *Id.*

154. Joe Schatteman, *HB 5709–Land Valuation Waivers–Signed into Law*, ILLINOIS MUNICIPAL LEAGUE (Feb. 2015), http://legislative.iml.org/page.cfm?key=14332&parent=3720. "On November 21, 2014, the Illinois Department of Transportation announced that an on-line, e-learning course has been developed which provides training requirements for the completion of valuation waivers. The course is now available through the Department's Learning Management System website: www.ildottraining.org." *Id.*

collected income tax revenue to local government entities.[155] The Act amended the Local Government Distributive Fund portions of the State Revenue Sharing Act, to state that the Comptroller shall perform the required transfers no later than sixty days after he or she receives certification from the Treasurer.[156]

VI. FEDERAL CASES AND LAWS

A. United States Supreme Court: Telecommunications Act of 1966: Public Bodies Must Provide Contemporaneous Reasons for Cell Phone Tower Application Denials to Applicants

On January 14, 2015, the United States Supreme Court issued its decision in *T-Mobile South, LLC v. City of Roswell*, holding "the Telecommunications Act of 1996 requires units of local government to issue written reasons at or about the same time they issue any decision to deny a cell phone tower application."[157] The decision was the result of T-Mobile South, LLC's lawsuit against the City of Roswell, Georgia, because the City sent its reasons for denial twenty-six days after the initial denial was communicated to T-Mobile.[158] The reasons were contained in the detailed and approved meeting minutes from the Roswell City Council hearing, which were provided to T-Mobile.[159]

However, the Supreme Court set forth two reasons that a locality must provide reasons contemporaneously with its denial: (1) because an adversely affected entity like T-Mobile is allowed only thirty days from the date of denial to decide whether or not to seek judicial review of said denial,[160] and (2) because a reviewing court cannot provide an adequate review of the denial without the reasons.[161] Therefore, the City's downfall was that it failed to send the reasons for the denial until after its minutes were approved, many days after the denial was sent out.[162]

Rule of law to follow: A public body should provide written reasons contemporaneously with the written denial of a cell phone tower application to avoid a violation of the Telecommunications Act of 1996.

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155. *Governor Quinn Signs IML's LGDF Prompt Payment Bill into Law*, ILLINOIS MUNICIPAL LEAGUE (Aug. 27, 2014), http://iml.org/page.cfm?key=12822; *see generally* 2014 Ill. Legis. Serv. P.A. 98-1052 (H.B. 961) (WEST) (eff. Aug. 26, 2014).
156. *Governor Quinn Signs IML's LGDF Prompt Payment Bill into Law*, *supra* note 155.
157. Michael J. Smoron, *Supreme Court Requires Written Reasons for Cell Tower Denials*, ILLINOIS MUNICIPAL REVIEW (May 2015), http://legislative.iml.org/page.cfm?key=15337&parent=3982; *see generally*, T-Mobile South, LLC v. City of Roswell, 135 S.Ct. 808 (2015).
158. Smoron, *supra* note 157.
159. T-*Mobile South, LLC*, 135 S.Ct. at 813.
160. *Id.* at 817.
161. *Id*. at 815.
162. Smoron, *supra* note 157.

B. United States Securities and Exchange Commission: Municipal Advisor Rule

Effective July 1, 2014, the US Securities and Exchange Commission promulgated the Municipal Advisor Rule (MAR), in order to prevent conflicts of interest during bond issuance and to make it illegal for any firm or person not registered as a Municipal Advisor to provide advice to municipal entities with respect to financial products.[163] Specifically, the MAR provides that the same firm cannot serve as both the municipal advisor and an underwriter for the same transaction.[164] MAR defines municipal advisors as lawyers, developers, engineers, investment bankers, accountants, or anyone who provides advice to a community regarding the issuance of municipal securities, the execution of swaps and other derivatives and the investment of municipal bond proceeds.[165] However, the MAR does not apply to an engineer if he is providing solely engineering advice.[166] The municipal advisor becomes a fiduciary, owes a fiduciary duty to the issuer (borrower/municipality), and must register with the SEC and Municipal Securities Rulemaking Board (MSRB).[167] Advice is also defined very broadly, and includes advice for pre-sale, sale, and post-sale activities.[168] Some commercial banks formerly provided bond advice but now may not be able to under the MAR, because if they did so they would become ineligible to underwrite the bond transaction.[169]

There are several exclusions to the MAR.[170] The first exclusion is the underwriter exclusion, which provides that broker-dealers serving as underwriters can avoid this rule if a written agreement with the issuer is executed for a finite period for particular financing terms.[171] The second exemption, the Request for Proposal (RFP) exemption, provides that public bodies may solicit ideas so long as a few conditions are met.[172] The RFP must identify the specific objective of the local government body; must be

163. Courtney C. Shea, *Complying with New Municipal Advisor Regulations*, ILLINOIS MUNICIPAL REVIEW (April 2015), http://legislative.iml.org/page.cfm?key=15023&parent=3920; *see also About the Municipal Advisor Rule*, COLUMBIA CAPITAL MANAGEMENT, LLC, http://www.municipaladvisor.info/aboutthemunicipa.html (last visited February 7, 2016); *see generally* SEC Municipal Advisor Rule, 17 C.F.R. §§ 240.15Ba1-1 to 240.15Ba-8, 240.15Bc4-1 (West 2015) [hereinafter MAR].

164. *About the Municipal Advisor Rule*, *supra* note 163.

165. *Id*.; MAR, *supra* note 163, at § 240.15Ba1-1(d)(1)(i).

166. *Exceptions and Exclusions to the Municipal Advisor Rule*, COLUMBIA CAPITAL MANAGEMENT, LLC, http://www.municipaladvisor.info/exceptions.html (last visited February 7, 2016); MAR, *supra* note 163, at § 240.15ba1-1(d)(2)(v).

167. Shea, *supra* note 163.

168. *Id*.; MAR, *supra* note 163, at § 240.15Ba1-1(d)(1)(ii).

169. Shea, *supra* note 163.

170. *Id*.

171. *Id*.; MAR, *supra* note 163, at § 240.15Ba1-1(d)(2)(i).

172. Shea, *surpa* note 163; MAR, *supra* note 163, at § 240.15Ba1-1(d)(3)(iv).

open for a reasonable period of time; and the process must be competitive in that the RFP must be sent to at least three market participants or publicly posted.[173] The third exemption is the Independent Registered Municipal Advisor (IRMA) exemption—which allows a registered municipal advisor to represent the municipality, and, after the IRMA letter is sent to the market participant, to allow other market participants to offer advice to the municipality.[174] The IRMA owes a fiduciary duty to the municipality to evaluate advice received from the market participant, and to identify any conflicts of interest.[175] The market participant does not owe the municipality a fiduciary duty.[176]

Practice pointer: Anyone representing a public body regarding bond issues should read and understand the new Municipal Advisor Rule.

C. Federal Lawsuit with AT&T results in Illinois Department of Revenue Seeking Refund of $16.7 Million in Telecommunications Excise Taxes Distributed to Local Governments

Over seven hundred local governments throughout the State of Illinois received a notice from the Illinois Department of Revenue (IDOR), seeking a refund of $16.7 million telecommunications excise taxes distributed to local governments from AT&T.[177] The settlement of a federal court lawsuit resulted in AT&T agreeing to refund customers over one billion dollars of improperly collected taxes for mobile device data plans from November 1, 2005, to September 7, 2010.[178] AT&T is required to reimburse customers when it receives the reimbursements from the State.[179] The State of Illinois acquired the reimbursement by subtracting the amount each municipality owed from new distributions of the telecommunications tax by the State beginning in August 2014 in equal amounts over the following twelve months, depending on the amount owed.[180]

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173. Shea, *supra* note 163.
174. *Registration of Municipal Advisors Frequently Asked Questions*, OFFICE OF MUNICIPAL SECURITIES, https://www.sec.gov/info/municipal/mun-advisors-faqs.shtml#section3 (last visited February 7, 2016); MAR, *supra* note 163, at §§ 240.15Ba1-1(d)(3)(vi)(A)-(B).
175. *Registration of Municipal Advisors Frequently Asked Questions*, *supra* note 174.
176. *Id*.
177. Jerry Zarley, *IML Legal Brief: Telecommunications Tax Refund Notice*, ILLINOIS MUNICIPAL LEAGUE (July 3, 2014), http://iml.org/page.cfm?key=12117.
178. *Id*.; *see generally* In re AT&T Mobility Wireless Data Services Sales Tax Litigation, 789 F.Supp.2d 935 (N.D. Ill. 2011).
179. Zarley, *supra* note 177.
180. *Id*.