

## Avoiding Personal Liability and Jail Time

Township Officials of Illinois  
Boot Camp  
November 11, 2013

Presented By:

Keri-Lyn J. Krafthefer  
Scott A. Puma

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## How to Avoid Jail



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## Know the Powers and Limitations of Your Office

- **Finances and expenditures**
  - Know the rules about bill payment
    - Prompt Payment Act, 50 ILCS 505/1
  - All bills must be approved or disapproved within 30 days after the goods/services are received or the invoice is received.
  - All bills must be paid within 30 days after approval.

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Who can authorize expenditures?  
Between meetings

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## Payment of Bills

- **Township Board must examine and audit township and road district bills before they are paid. 60 ILCS 1/80-10, 80-15.**
  - Except general assistance, wages, social security taxes
  - Sufficient background documentation?
  - Money in line item/budget?
  - Separate approval required for expenditures, even if they are accounted for in the budget
  - Discretion over town funds, highway commissioner and assessor

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## Payment of Bills

- Have a written policy, adopted by resolution, regarding the payment of bills between meetings
- Have a written policy, adopted by resolution, regarding the Supervisor's or Administrator's ability to commit to the expenditure of funds, with a limit.
- You can require any account to be verified by affidavit. 60 ILCS 1/80-25.

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## Know the Powers and Limitations of Your Office

- **Finances and expenditures**
  - Supervisor must pay bills within 20 days after clerk provides certificate of audit by board. 60 ILCS 1/80-50 (a)
  - Wages must be paid at least once a month, and no later than 15 days after end of pay period. 60 ILCS 1/80-50 (b)
  - Supervisor's failure to pay bills can result in bond forfeiture. 60 ILCS 1/80-50 (c).

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## Finances and Expenditures

- “It’s in the budget so I can spend it!”
- “We have always done it this way!”



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## General Rule- Audit the Accounts

- The town board meets for the purpose of examining the township and road district accounts before the bills are paid.
- The town board examines the accounts of the supervisor and highway commissioner for all money received and distributed.

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## Day to Day Expenditures

- What if the supervisor needs more toner for her printer, how does she buy it?



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## Who can sign a contract?



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## All contracts **MUST** be approved by the Town Board



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## Credit Cards



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## Credit cards are bad

- Only use for limited purposes
- Have a policy regarding credit card use
- Do not use to pay for personal items with the idea that you will reimburse the township later

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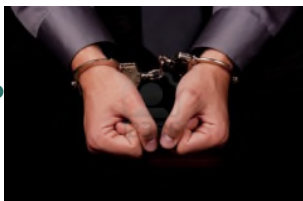
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## Personal use of a township credit card

- Could get you arrested and charged with a felony – EVEN if you reimburse later!



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## Private information

- General Assistance
- Employees
- Residents

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## Closed Session Meetings

- Respect your other board members and don't talk to others about what happened



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## Know your duties!

- Make sure you understand what your "job" is in township government
- Use resources from TOI
- Know your deadlines and filing obligations
- See TOI calendar!

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## Bid rigging

- 720 ILCS 5/33E-3 Bid-rigging.

A person commits the offense of **bid-rigging** when he knowingly agrees with any person who is, or but for such agreement would be, a **competitor** of such person concerning any bid submitted or not submitted by such person or another to a unit of State or local government when with the intent that the bid submitted or not submitted will result in the award of a contract to such person or another and he either (1) provides such person or receives from **another information concerning the price or other material term or terms of the bid which would otherwise not be disclosed to a competitor** in an independent noncollusive submission of bids or (2) **submits a bid that is of such a price or other material term or terms that he does not intend the bid to be accepted.**

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## Undue influence in contracts



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## Public Officers Prohibited Activities Act

- 50 ILCS 105/2a

Township supervisors and trustees. **No township supervisor or trustee, during the term of office for which he or she is elected, may accept, be appointed to, or hold any office by the appointment of the board of township trustees unless he or she first resigns from the office of supervisor or trustee or unless the appointment is specifically authorized by law.** A supervisor or trustee may, however, serve as a volunteer fireman and receive compensation for that service. Any appointment in violation of this Section is void. **Nothing in this Act shall be construed to prohibit an elected township official from holding elected office in another unit of local government as long as there is no contractual relationship between the township and the other unit of local government.**

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## 50 ILCS 105/3 Prohibited interest in contracts.

(a) No person holding any office, ..., may be in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. No such officer may represent, either as agent or otherwise, any person, association, trust, or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. Nor may any such officer take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action in his official character. Any contract made and procured in violation hereof is void.

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## Seems clear, doesn't it?



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## Exceptions

(b) However, any elected or appointed member of the governing body may provide materials, merchandise, property, services, or labor, subject to the following provisions under **either** paragraph (1) or (2):

(1) If:

A. the contract is with a person, firm, partnership, association, corporation, or cooperative association in which such interested member of the governing body of the municipality has less than a 7 1/2% share in the ownership; and

B. such interested member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and

C. such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum; and

D. such contract is approved by a majority vote of those members presently holding office; and

E. the contract is awarded after sealed bids to the lowest responsible bidder if the amount of the contract exceeds \$1500, or awarded without bidding if the amount of the contract is less than \$1500; and

F. the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed \$25,000.

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## Another Exception

(2) If:

- A. the award of the contract is **approved by a majority** vote of the governing body of the municipality provided that **any such interested member shall abstain** from voting; and
- B. the amount of the contract **does not exceed \$2,000**; and
- C. the award of the contract **would not cause the aggregate amount** of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association **in the same fiscal year to exceed \$4,000**; and
- D. **such interested member publicly discloses the nature and extent of his interest prior to or during deliberations** concerning the proposed award of the contract; and
- E. **such interested member abstains from voting on the award of the contract**, though he shall be considered present for the purposes of establishing a quorum.

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## One more exception

(b-5) In addition to the above exemptions, any elected or appointed member of the governing body may provide materials, merchandise, property, services, or labor if:

- A. the contract is with a person, firm, partnership, association, corporation, or cooperative association in which **the interested member** of the governing body of the municipality, advisory panel, or commission has **less than a 1% share in the ownership**; and
- B. the award of the contract is **approved by a majority vote of the governing body of the municipality provided that any such interested member shall abstain from voting**; and
- C. **such interested member publicly discloses the nature and extent of his interest before or during deliberations** concerning the proposed award of the contract; and
- D. **such interested member abstains from voting on the award of the contract**, though he shall be considered present for the purposes of establishing a quorum.

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## Contracts with friends and relatives of board members

- Brother-in-law
- Daughter who lives with you
- Neighbor
- Spouse

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## Technology Public v. Private



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## Publicly-owned devices



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## Private devices



- City of Champaign v. Madigan
- If it relates to public business it shall be disclosed, regardless of whether on a public or private device

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## STATE OFFICIALS AND EMPLOYEES ETHICS ACT

- The “State Officials and Employees Ethics Act,” 5 ILCS 430/1-1 *et seq.*, regulates the solicitation and acceptance of gifts by government officers and employees and prohibits certain involvement in political activity by government officials and employees

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## What is Banned and Who Must Comply?

The Ethics Act prohibits *employees* and *officers* of governmental entities from accepting or soliciting *gifts* from any *prohibited source*. In order to ensure full compliance with the gift ban, it is important to examine the definitions of these terms to understand who is prohibited from giving or receiving gifts and what is prohibited.

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## What is a *gift* ?



A “*gift*” is defined as “any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to government employment or the official position of an employee, member, or officer.”

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## A “prohibited source” includes:

- Any person or entity that is seeking official action by a member, officer, or employee of a local government;



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## Prohibited source also includes

- any person or entity that conducts activities regulated by local government, or that does business or seeks to do business by or with a member or officer of a local government;



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## Prohibited source also includes

- any person or entity that has interests that may be substantially affected by the performance or non-performance of an officer's or employee's official duties; and



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## Prohibited source also includes



- any person or entity that is registered or is required to be registered with the Secretary of State under the Lobbyist Registration Act

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## No gifts to spouses or kids



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## What Gifts are Permitted?

Food or refreshments not exceeding \$75.00 per person in value on a single calendar day; provided that the food or refreshments are:

- Consumed on the premises from which they were purchased or prepared; or
- Purchased ready to eat and delivered by any means.

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## What Gifts are Permitted?



- Items from any one prohibited source during any calendar year having a *cumulative* total value of less than \$100.

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## What if I make a mistake?

- An individual may avoid violation of the State Act by returning the prohibited gift to the donor or giving the gift (or its equivalent) to charity.



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## What if I violate the Gift Ban Act?

- A person who intentionally violates any provision of Article 10 is guilty of a business offense and subject to a fine of at least \$1,001 and up to \$5,000.
- Any person who intentionally makes a false report alleging a violation of any provision of this Act to an ethics commission, an inspector general, the State Police, a State's Attorney, the Attorney General, or any other law enforcement official is guilty of a Class A misdemeanor.
- An ethics commission may levy an administrative fine of up to \$5,000 against any person who violates this Act, who intentionally obstructs or interferes with an investigation conducted under this Act by an inspector general, or who intentionally makes a false, frivolous, or bad faith allegation.
- In addition to any other penalty that may apply, whether criminal or civil, a State employee who intentionally violates any provision of Section ... is subject to discipline or discharge by the appropriate ultimate jurisdictional authority.

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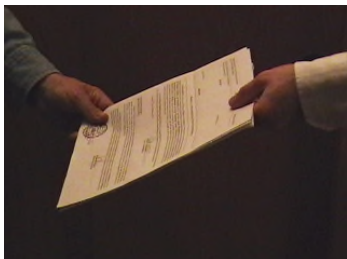
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## We've been sued! Now what?



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## Read the lawsuit

- You will probably get angry when you do!
- Give immediately to township attorney
- Give to any named official



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## Tender defense to your township's insurance carrier



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## The duty to defend



- Has the plaintiff alleged that you have done something which is covered by the township's insurance policy?
- If yes, the carrier provides a lawyer to defend you.

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## The duty to indemnify



- The insurance company will pay any damages if there is a settlement or after trial, unless they are punitive damages

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## I'm named as a defendant in a lawsuit against my township.

- The complaint contains a prayer for compensatory damages, as well as punitive damages against me personally. What is the difference?

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### Should I notify my personal insurance carrier too?

- No, unless you are named in your individual capacity and the plaintiff is seeking punitive damages against you

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### What if the insurance company denies coverage?

If you were acting in the scope of your authority, the township will likely agree to defend and indemnify you through the use of an attorney hired by the township or the insurance company.

If the complaint alleges you were acting beyond your authority, and seeks damages against you personally, notify your homeowners' insurance carrier.

If both allegations are made, the insurance company will usually defend.

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### Who decides if the township will pay for my lawyer?

- If there is township insurance coverage for the dispute, the township and/or insurer will pay.
- If there is no insurance and the acts alleged are outside the scope of official duties, the town board decides whether to pay the costs of defense, unless the allegations are criminal.
- If there is a dispute over whether the township or insurer must pay for the legal defense of the lawsuit, an official can file a separate lawsuit, known as a "declaratory action," to determine whether there is an obligation to provide a defense.
- If criminal charges are filed against a township official, insurance will not provide a defense and the official must cover their own legal expenses.

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### What is the Tort Immunity Act and why should I care?

- The Illinois Legislature enacted the Local Governmental and Governmental Employees Tort Immunity Act ("Tort Immunity Act") almost 50 years ago to protect local governments and public employees from civil liability for certain acts and omissions arising from the operation of government. It provides various immunities and defenses to state law tort claims seeking monetary damages for injuries to a person or loss of property. The Act expressly defines "public employee" to include any "present or former officer, member of a board, commission or committee, agent, volunteer, servant or employee, whether or not compensated."

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### How can I learn more about the Tort Immunity Act?

- Ance! Glink's Tort Immunity Handbook at [www.ancelglink.com](http://www.ancelglink.com)

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### We just got sued, should we destroy everything?



- Do not delete emails, do not destroy documents
- You have a duty to preserve documents and data
- Destroying evidence is a crime

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### What can I say at a meeting without fear of being sued?

- Legislative immunity applies to board members engaged in determining, formulating or enacting policies, rules or laws.
- It has been applied to introducing, debating and voting on legislation as well as many activities essential to facilitating or preventing those core legislative acts

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### Immunity doesn't always apply

- Legislative acts (passing an ordinance, even if it negatively impacts someone)

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- Administrative act (firing an employee)

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### Defamation

- Slander – when someone makes a false statement
- Libel – when someone publishes a false statement

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### The newspaper got it wrong. Can I sue for printing false things?

- Probably not successfully (NYT v. Sullivan, 1964)
- The actual malice standard requires public officials in a defamation case prove that the publisher of the statement in question knew that the statement was false or acted in reckless disregard of its truth or falsity
- You would also have to show actual damages, which means that you sustained a monetary loss because of the false statement

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### What about that blogging jerk who comes to all of our meetings?



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### Who uses the township's lawyer when the supervisor and board are fighting?



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Who picks the attorneys if the township board is battling with the highway commissioner?



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What if it's the township board  
v. the assessor?



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How can we keep our legal fees  
under control?



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## Controlling Legal Fees

- Play nice with each other
- Get the attorney involved sooner – not later
- Document personnel issues
- Don't do it yourself when creating legal documents

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## Questions?

Keri-Lyn J. Krafthefer  
[kkrafthefer@ancelglink.com](mailto:kkrafthefer@ancelglink.com)  
312-604-9126

Scott A. Puma  
[spuma@ancelglink.com](mailto:spuma@ancelglink.com)  
847-247-7400  
[www.ancelglink.com](http://www.ancelglink.com)

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