



Ancel Glink Defense E-News

First Quarter 2017

**Ancel
Glink**

DIAMOND BUSH
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& KRAFTHOFER

Welcome to *Ancel Glink Defense E-News*, our electronic newsletter. In this newsletter, we focus on the latest court decisions and legislative changes in litigation which may affect you.

Ancel Glink Defense E-News is a publication of the defense litigation group of Ancel, Glink, Diamond, Bush, DiCianni & Krafthofer, P.C.

For more information about this edition of the *E-News*, please contact litigation partner, [Lucy Bednarek](#).

CASES YOU SHOULD KNOW ABOUT

Qualified Immunity

White v. Pauly, 137 S.Ct. 548 (January 9, 2017).

A police officer who - having arrived late at an ongoing police action and having witnessed shots being fired by one of several individuals in a house surrounded by other officers - shot and killed an armed occupant of the house without first giving a warning. The United States Supreme Court held that qualified immunity applied because clearly established law does not prohibit a reasonable officer who arrives late to assume that proper procedures have already been followed. The Supreme Court went on to state that there was "No settled Fourth Amendment principle that requires an officer to second-guess the earlier steps already taken by his or her fellow officers in instances like the one [the officer] confronted here."

School District not Liable for Student Bullying Claims

Mulvey v. Carl Sandberg High School, 2016 IL App (1st) 151615 (October 28, 2016).

Ancel Glink attorneys Darcy Proctor and Brent Denzin defended a student bullying lawsuit in which the plaintiffs alleged two minor sisters were bullied by their basketball teammates. The plaintiffs claimed the School District failed to take proper action, including enforcing its anti-bullying statute. The breach of contract claims concentrated on the anti-bullying policies the District incorporated into its student and athletic handbooks. The plaintiffs alleged the handbooks formed a contract with the District, which the District breached when it failed to rectify the conditions that resulted in the bullying. The Illinois Appellate Court affirmed the dismissal of the breach of contract claims, holding the public school handbooks could not form the basis of a contract. The Court also held the tort claims were properly dismissed on the basis of discretionary immunity.

Statute of Limitations for Sexual Abuse Cases

Doe v. Carlson, 2017 IL App (1st) 160536 (February 7, 2017).

The plaintiff's complaint alleged she was sexually abused by a camp counselor for four years, beginning when she was 16. The Illinois Appellate Court held that, pursuant to the discovery rule, the plaintiff knew that a portion of her injury was caused by the abuse when she was 16. As a result, the two year statute of limitations began to run on her claims when she reached the age of 18. The statute expired in 1999, but plaintiff did not file her complaint until 2013. As such, the complaint was properly dismissed as time-barred.

Religious Land Use and Institutionalized Persons Act

Village of West Dundee v. First United Methodist Church of West Dundee, 2017 IL App (2d) 150278 (March 7, 2017).

The property at issue was a historic building owned by the defendant church which had fallen into disrepair. The church's application for a permit to demolish the building was denied because the Village wanted the building restored. The church brought a claim under the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that requiring the building to be repaired, instead of demolished, would ruin the church financially. The Illinois Appellate Court held the alleged repair costs could qualify as a substantial burden on the church's free exercise of religion. The Court also held the church had a viable unequal treatment claim because the Village had previously authorized the demolition of several other historic structures for commercial use. Finally, the Court held the church sufficiently alleged an inverse condemnation claim.

Public Safety Employee Benefit Act - Injury During an "Invalid Assist"

Wilczak v. Village of Lombard, 2016 IL App (2d) 160205 (December 5, 2016).

A firefighter sought health care benefits under the Public Safety Employees Benefits Act (PSEBA) after he suffered a shoulder injury when lifting a disabled person. The Illinois Appellate Court affirmed the denial of benefits, finding the firefighter's belief that he was responding to an emergency while lifting the disabled person was not reasonable. The Court noted that the injury occurred while the firefighter was dispatched for a routine "invalid assist," which the firefighter should have known did not involve an emergency from the beginning of the call because the patient was not injured.

Public Safety Employee Benefit Act - Civilian Paramedics

Mitchell v. Village of Barrington, 2016 IL App (1st) 153094 (November 23, 2016).

Plaintiff brought an action against the Village seeking health care benefits under the Public Safety Employee benefits Act (PSEBA), following her termination after she was injured while working as a civilian paramedic. The Village denied plaintiff's requests for health care benefits finding that, as a civilian paramedic, she was not covered under the Act. The Illinois Appellate Court affirmed the denial of benefits, holding that plaintiff was not a "full time" firefighter within the meaning of the Act and, therefore, not covered by it. In addition, because the Village had a rational basis to treat full-time firefighters and sworn firefighter/paramedics differently than civilian paramedics, plaintiff could not state a claim for equal protection

PROPOSED LAWS THAT MAY AFFECT YOU

Reinstate "Public Duty Rule" in Illinois

House Bill 2349 would create the Public Duty Rule Codification Act. The Act would clarify that a local government and its employees do not owe a duty to provide governmental services to individual members of the general public. On February 24, 2017, the bill was sent to the Tort Liability Subcommittee.

Amendment to Abused and Neglected Child Reporting Act

House Bill 3288 would amend the Abused and Neglected Child Reporting Act by removing a list of specified persons who are required to report to the Department of Children and Family Services suspected cases of child abuse or neglect. Instead the bill provides that any person, agency, organization, or entity that knows or in good faith suspects a child is being abused or neglected shall report it to the Department immediately. On February 22, 2017, the bill was assigned to the Human Services Committee.

Bill Would Make Emails on Private Devices "Public Records"

House Bill 2385 would amend the Local Records Act by providing that all emails sent and received by a government agency, employee, staff member, or contractor are public records. The bill requires that (1) the agencies provide official email addresses to all officers of the agency if employees are provided with an official email address; (2) all officers, employees, and contractors use the official email address; and (3) all officers, employees, and contractors must forward any email sent or received on his or her personal email address to the agency-provided email if it relates to agency business, or if the agency does not have an official email account, then provide a copy of the email to the agency. On February 14, 2017, the bill was assigned to the Executive Committee.

Local Government Internet Postings

House Bill 290 amends the Local Records Act by requiring any local government with a population of 5,000 or more and school districts with an enrollment of 500 or more to maintain a website and post certain information on the website. A resident of the local government or school district may bring an action to compel compliance. On March 8, 2017, the bill was sent to the Transparency Subcommittee.

Open Meetings Posting Records

House Bill 442 amends the Open Meetings Act by requiring local governments or school districts with an operating budget of \$1 million or more to maintain and post on a website information such as: information about elected and appointed officials; notice of meetings and materials prepared for meetings; the procedures for requesting information from the unit of government; annual budget; ordinances; procedures to apply for building permits and zoning variances; financial reports and audits; and information regarding employee compensation. A resident of the local government or school district may bring an action to compel compliance. On March 8, 2017, the bill was sent to the Transparency Subcommittee.

RISK MANAGEMENT PUBLICATIONS & EVENTS

Tom DiCianni and Lucy Bednarek will be speaking at the International Municipal Lawyers Association Mid-Year Seminar in Washington, D.C. in April, 2017 on *Practice Pointers in Defending Against Wrongful Conviction Claims*.

Darcy Proctor spoke at the 2017 Illinois Association of Park Districts/Illinois Parks and Recreation Soaring to New Heights Conference in Chicago in January, 2017 on the following topics: *Hot Topics in Employment Litigation* and *Dealing with Bullying in Your Agency's Programs*.

Tom DiCianni recently published an article in the IDC Quarterly, First Quarter 2017, on liability from water management activities entitled [Water Water Everywhere](#).

Christy Michaelson presented with David Silverman and Dan Bolin in February, 2017 at the American Planning Association's Illinois Chapter's [Planning Law Session](#) on premises liability.

Liz Barton was elected to the Board of Directors for the Illinois Association of Defense Trial Counsel, and received the organization's 2016 Rising Star Award.

Darcy Proctor and Margaret Kostopulos presented a workshop on *Demystifying Transgender Issues for Public Entities* in Bloomington, Illinois in August, 2016.

ABOUT ANCEL GLINK DEFENSE

The attorneys who comprise Ancel Glink's defense litigation group are dedicated almost exclusively to defending governmental entities in tort, civil rights, employment, business and other claims and lawsuits. In addition to defending municipalities, school districts, park districts, townships and other entities in lawsuits in state and federal courts, Ancel Glink's litigation group handles appeals, administrative hearings, critical incident crisis management, loss control training and seminars, file audits, and special consultation. Visit our web-site at www.ancelglink.com or email us at e-news@ancelglink.com.

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