



*Township Officials of Illinois Annual
Education Conference*

**17 WAYS TO KEEP YOUR TOWNSHIP
FROM GETTING A CALL FROM THE
STATE'S ATTORNEY**

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Ms. Krafthefer has been named by Chicago Magazine and Illinois Super Lawyers as one of the top 50 female attorneys in the State of Illinois, as well as one of the top attorneys representing cities and villages. Ms. Krafthefer is the primary author of the Township Officials of Illinois Laws & Duties Handbook. She has authored several chapters of the Township Clerk's Handbook, helped edit The Illinois Township Supervisor's Guide and has spoken at various zone meetings for the Township Officials of Illinois clerks division, providing an overview of township clerks' responsibilities. Ms. Krafthefer also formerly served as a Township Trustee in York Township. She serves as the township attorney or special counsel for many townships.

Ms. Krafthefer speaks regularly at training seminars and the annual conferences sponsored by the Township Officials of Illinois, as well as to regional township and township clerks' associations. Ms. Krafthefer is the former Chair of the Chicago Bar Association's Local Government Law Committee, the CBA's Election Law Committee and the CBA's Entertainment Committee. For more information on Ms. Krafthefer or our firm, visit our website at www.ancelglink.com.

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Prior to attending law school, Mr. Jurgens interned on Governor Jim Edgar's policy staff and worked in the Illinois General Assembly for legislators in both the State House of Representatives and the State Senate. In keeping with his legislative background, Mr. Jurgens frequently presents to local governments on new laws and procedures.

Mr. Jurgens concentrates his legal practice in representing townships, municipalities and park districts. He routinely serves as either corporate or special counsel and works on issues concerning zoning, annexation, statutory compliance, board practices and procedures, and employment. He is also a frequent presenter at many seminars and conferences, including the Township Officials of Illinois Annual Education Conference and other educational sessions for township officials. He contributed to the Township Officials of Illinois Laws and Duties Handbook and also wrote a publication on surviving the township caucus process.

17 WAYS TO KEEP YOUR TOWNSHIP FROM GETTING A CALL FROM THE STATE'S ATTORNEY

1. FOLLOW THE RULES ABOUT MEETINGS AND THE OPEN MEETINGS ACT

A. Understand what constitutes a quorum. In 2007, the Illinois General Assembly amended the definition of "meeting" for 5-member public bodies, such as townships, under the Open Meetings Act. Previously a "meeting" was defined as any gathering of a majority of a quorum of the members of the public body held for the purposes of discussing public business. This vexed many township boards, because a quorum was three members and, therefore, a majority of a quorum was two members. By application of the previous rule, two township board members could not speak about even insignificant township business without committing a technical violation of the Open Meetings Act.

Under this new amendment, the definition of "meeting" for 5-member public bodies has been amended so that a meeting is now a quorum of the board, instead of a majority of the quorum. This amendment will make a world of difference for township board members, because now two board members speaking about public business does not constitute a "meeting" and, therefore, does not violate the Open Meetings Act. This amendment also applies to township committees.

However, since now two township board members can speak about township business in private, one concern was that those two members could decide township matters out of the context of a public meeting. To prevent that from happening, this new law changes the vote requirement required for 5-member township boards to act. Under this new law, 3 members of the body constitute a quorum and the affirmative vote of three members is necessary to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required. What this amendment does, probably inadvertently, is to make every abstention a vote that does not fall with the majority.

B. Prepare correct agendas and act only on items listed on the agenda. For a regular meeting, you cannot take action on anything that is not listed on the agenda. You must post the agenda on your web site if you have full-time employees who maintain your website.

C. Notices. Make sure to give the public notice of your meeting.

D. Understand Robert's Rules of Order.

2. KEEP ACCURATE CLOSED SESSION MINUTES AND FOLLOW THE PROPER PROCEDURES FOR APPROVING AND RELEASING THEM

The Open Meetings Act requires each public body to review closed session minutes at least once every six months to determine if it is appropriate to release them. Sometimes, there is confusion about the process for reviewing and approving the content of closed session minutes and the process of reviewing those minutes to determine whether it is appropriate to release them to the public. This memo does not deal with the issue of the retention and erasure of the tapes of

closed meetings, but only the written minutes of those meetings. Here are some suggestions that we have about this process:

A. Approving for content:

1. The body may vote in closed session to approve the content of closed session minutes. If you do this in open session, you can potentially make the minutes a public record and require their release to the public before you really intend to do so.

2. When you go into closed session to approve closed session minutes, the motion to go into closed session should include that item as one of the reasons for going into closed session. We recommend that you review closed session minutes at a meeting relatively close to the time when the closed session occurred, while events are still fresh in the minds of the participants in the closed session.

3. Once approved for content, the minutes are not released to the public until action is taken to release them. They must also be approved for release in the manner described below.

B. Approving for release to public:

1. You must review closed session minutes at least once every six months to determine whether they may be released or whether the need for confidentiality still exists as to all or part of those minutes.

2. We suggest that you set a schedule as to when minutes will be reviewed for release, and put those dates on your calendar. (For example, closed session minutes will be reviewed, at a minimum, each April and October).

3. Consider the use of a chart listing the meeting, the topics that were discussed in closed session, the exception under the Open Meetings Act under which each topic was considered, and the Clerk's and attorney's recommendation about holding or releasing the minutes. This type of chart, if used, would be a confidential document that would only be seen and used in closed session. This makes the review a quick process and provides a clear record of what the public body considered.

4. If the board/council finds that the need for confidentiality still exists as to all or part of the minutes, they must make that finding in closed session and it should be noted in the minutes of the meeting at which the minutes are being reviewed.

5. If the board/council finds that some, but not all, of the closed session minutes can be released, the portion that remains confidential should be redacted from any copies of the minutes that are made available to the public.

C. Formal Action Approving the Release of Closed Session Minutes:

If, after a review, the board/council approves the release of all or a part of the minutes of a particular meeting, the board/council should pass a resolution authorizing the release of those minutes or portions of minutes. There is no requirement that such a resolution comment on the minutes or portions of minutes that are not approved for release, although some communities list the retained minutes in that enactment. (However, the public body must make a finding in closed session that an ongoing need for confidentiality still exists related to the unreleased minutes, which must be noted in the minutes of the meeting at which the minutes are reviewed and that finding is made.) The use of a chart will continue to show the inventory and status of retained minutes.

3. **ONLY GO INTO CLOSED SESSION FOR APPROPRIATE REASONS AND FOLLOW THE CORRECT PROCEDURES**

A. Reasons. Meetings or portions of meetings concerning the following subjects most relevant to townships may be closed to the public, although these exceptions are to be construed narrowly (People ex rel. Ryan v. Village of Villa Park, 212 Ill. App. 3d 187, 570 N.E.2d 882, 156 Ill. Dec. 406 (2d Dist. 1991)):

1. collective negotiating matters between public employers and their employees or representatives (since the passage of the Illinois Public Employees Labor Relations Act, 5 ILCS 315/1 *et seq.*, and the Illinois Educational Labor Relations Act, 115 ILCS 5/1 *et seq.*, which grant collective bargaining rights to various public employees, it appears that because collective bargaining sessions are simply not subject to the Open Meetings Act, no notice of such meetings need be given, and final action may be taken at such sessions to instruct negotiators);
2. deliberations concerning salary schedules for one or more classes of township employees;
3. meetings where the purchase or lease of real property for the use of the public body is being considered, including meetings held for the purpose of discussing whether a particular parcel should be acquired, or where the public body is considering the setting of a price for sale or lease of its property. These discussions must involve a specific piece of property and not just the general idea of buying land (or perhaps even selling land) in a particular area. Discussions of this nature involve questions of general public policy and must be discussed in open session. Ryan v. Village of Villa Park, *supra*.
4. meetings authorized to be closed by the Constitution;
5. meetings held to discuss litigation when an action against, affecting, or on behalf of the particular body has been filed and is pending in a court or

administrative tribunal, or when the public body finds that such an action is probable or imminent, in which case the basis for such a finding shall be recorded and entered into the minutes of the closed meeting. Where prospective litigation is concerned, there must be a real case or controversy involved rather than a policy or philosophical debate over a matter that, if not handled properly, could result in litigation;

6. meetings to consider the appointment, employment, compensation, discipline, performance, or dismissal of specific employees or legal counsel for the public body, or to hear testimony on a complaint lodged against an employee or legal counsel for the public body in order to determine its validity. (These discussions can involve the entire employment relationship, People v. Board of Educ. of Dist. 170 of Lee and Ogle Counties, 40 Ill. App. 3d 819, 353 N.E.2d 147 (2d Dist. 1976), and can be held by means of a telecommunications conference, Freedom Oil Co. v. Illinois Pollution Control Bd., 275 Ill. App. 3d 508, 655 N.E.2d 1184 (4th Dist. 1995); Scott v. Illinois State Police Merit Bd., 222 Ill. App. 3d 496, 584 N.E.2d 199 (1st Dist. 1991).) A closed session cannot be held to consider the hiring or firing of an independent contractor unless it is subject to another independent exception, such as litigation;
7. meetings to discuss professional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to its field of competence;
8. meetings to consider the appointment of a person to fill a public office or vacancy in a public office where the body has the appointing authority, and to consider removal from office where the body has the equivalent power;
9. meetings to establish reserves or settle claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act, if the disposition of a claim or potential claim otherwise might be prejudiced, or to discuss information regarding or from an insurer or self-insurance pool of which the government is a member;
10. meetings of bodies with criminal investigatory responsibilities to consider informant sources, the hiring or assignment of undercover personnel or equipment, or ongoing, prior or future criminal investigations;
11. meetings conciliating complaints of discrimination in the sale or rental of housing, provided an ordinance has been enacted creating a body for enforcement purposes and authorizing the closing of such meetings;
12. meetings of a township operating as a township utility or power or natural gas agency to discuss contracts for the purchase, sale or delivery of

electricity or natural gas and the results of load forecast studies (Added as 5 ILCS 120/2(c)(23) by P.A. 90-144, eff. 12/96);

13. meetings of a "quasi-adjudicative body" to consider testimony and evidence presented in open hearing if the body makes available its prepared written decision;
14. meetings to review and approve closed session minutes;
15. meetings to discuss self-evaluation, practices and procedures, or professional ethics when meeting with a representative of a statewide association of which the body is a member; and,
16. meetings to consider security procedures to be used in response to an actual, threatened, or reasonably potential danger to the safety of the public, public property, or public employees. 5 ILCS 120/2.

B. Procedures. If the subject to be discussed at the meeting is one of the enumerated exceptions listed above, from Section 2(c) of the Act, then the public body may hold a meeting closed to the public only if:

1. a majority of a quorum at a meeting open to the public has voted to have such a closed meeting;
2. proper notice was given for the meeting at which the vote was taken;
3. the vote of each member on the question of holding the meeting closed is recorded and entered in the minutes of the open meeting; and
4. the motion to hold the closed session and the minutes of the meeting contain a citation identifying the specific exception which authorizes the closing of the meeting to the public.

Only topics specified in the motion may be discussed at the closed session. 5 ILCS 120/2a. Additionally, a closed session authorized by a proper vote can take place as part of a properly noticed regular, special or emergency meeting open to the public without the need for any further notice or an indication in the agenda that a closed session would be held. 5 ILCS 120/2a.

Unless a closed session to be held at a later date is announced at an open meeting, the session must be held in conjunction with a regular or special meeting. A motion calling the closed session must be made. Under Section 2a, the motion should state the specific exemption applicable to the session being called, such as "pending litigation" or "collective negotiations," etc. The degree of detail required for the description of the exemption varies considerably. Henry v. Anderson, 356 Ill.App.3d 952 (4th Dist. 2005) (holding that description of exemption as "employee matter, specifically, the reclassification of employment," was sufficient, while

"potential litigation" was not because it did not describe whether the litigation was probable or imminent, and why such litigation would be probable or imminent).

4. UNDERSTAND THE DIFFERENCE BETWEEN THE POWERS OF THE ELECTORS AT THE ANNUAL TOWNSHIP MEETING AND THE POWERS OF THE TOWNSHIP BOARD/ DO NOT EXERCISE POWERS THAT THE TOWNSHIP BOARD DOES NOT HAVE

A. Understand Dillon's Rule: Townships and other units of local government are regulated by provisions of Article VII, Sec. 8 of the 1970 Illinois Constitution which states in part, these governments "shall have only powers granted by law." In the late 1800s, John F. Dillon, a Supreme Court Justice in Iowa, developed this legal principle, which is known as Dillon's Rule. In plain language it means that if there is no statute permitting a township or road district (or official) to perform a function or service, the government or official may not carry out that function regardless of how much it's needed or wanted. If the statutes are silent (do not mention) regarding a particular power or function, it does not exist. If the power doesn't exist, the government (or official) may not perform the service.

B. Cases: Evers v. Collinsville Township, 207 Ill.Dec. 565 (5th Dist. 1995)
Baldacchino v. Thompson, 289 Ill.App.3d 104 (1st Dist. 1997)
Ziller v. Rossi, 2009 WL 3048440 (Ill.App.2nd Dist. September 18, 2009)

5. UNDERSTAND AND FOLLOW THE GIFT BAN ACT

A. History: Late in the 1998 legislative session, the Gift Ban Act. It imposed a broad rule prohibiting public officers and employees from accepting gifts, then created 23 exceptions. It also required the creation of an ethics commission and imposed other ambiguous requirements on units of local government. A former state senator and former village trustee filed a lawsuit challenging the Act, alleging that it was unconstitutional because it a) imposed different standards for members of the executive and judicial branch, thereby violating the separation of powers doctrines, b) violated the single subject provision, and c) required units of local government to implement their own gift prohibitions, while not telling them what was required by law. The circuit court found the Gift Ban Act was unconstitutional, and the case went up to the Illinois Supreme Court on a direct appeal. In Flynn v. Ryan, 2002 WL 1038732 (May 23, 2002), the Illinois Supreme Court held that the lower court improperly declared the Act unconstitutional for technical legal reasons.

B. General Assembly Amends Statute: During the same time period, the General Assembly passed House Bill 4680, which eliminated the language in the Gift Ban Act which previously provided that "an item of nominal value such as a greeting card, baseball cap, or T-shirt" was an exception to the ban against gift-giving. The eliminated language was replaced with a new exception providing that "any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100" will not be banned.

C. The following items are exceptions to the Gift Ban Act:

1. Anything for which you pay market value.
2. Certain campaign contributions and tickets to political fundraisers
3. Gifts from relatives.
4. Gifts provided on the basis of a personal friendship, unless it's not provided for personal friendship reasons.
5. Commercial loans.
6. Contributions to legal defense funds.
7. Intra-office and inter-office gifts.
8. Food, refreshments, lodging, transportation, and other certain employment benefits, and benefits provided by a political organization in connection with a fundraising or campaign event sponsored by that organization.
9. Pension and other related benefits from a former employer.
10. Informational materials such as books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.
11. Awards or prizes that are given to competitors in contests or events open to the public, including random drawings.
12. Honorary degrees (and associated travel, food, refreshments, and entertainment provided in the presentation of degrees and awards).
13. Training (including food and refreshments) if the training is in the interest of the governmental entity.
14. Educational missions to educate public officials on matters of public policy with other federal, state, or local public officials and community leaders.
15. Bequests, inheritances, and other transfers at death.
16. Anything that is paid for by a government under a government contract.
17. A gift of personal hospitality.
18. Free attendance at a qualifying "widely-attended event."
19. Certain opportunities and benefits that are offered to certain groups and classes.
20. A plaque, trophy, or other commemorative item extended for presentation.
21. Golf or tennis; food or refreshments of nominal value and catered food or refreshments; meals or beverages consumed on the premises from which they were purchased.
22. Promotional donations of products from an Illinois company that are intended primarily for promotional purposes which are of minimal value.
23. Any item from or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.

6. **KEEP YOUR EMPLOYEES FROM SUING YOU**

See our attached article for tips on this topic.

7. FOLLOW THE FREEDOM OF INFORMATION ACT

Please refer to the article on the front page of our newsletter regarding the changes to the Freedom of Information Act.

8. UNDERSTAND THE DIFFERENCE BETWEEN TOWNSHIP BUSINESS AND POLITICAL ACTIVITIES

The Ethics Law contains a list of prohibited political activities which restricts the use of governmental funds and facilities for political purposes. This law is codified at 5 ILCS 430/5-15 and applies to townships through 5 ILCS 430/70-5. This law prohibits officers and employees of governmental entities from intentionally performing any prohibited political activity on “compensated time” and from intentionally misappropriating any governmental property or resources by engaging in any prohibited political activity for the benefit of any campaign for elective office or any political organization. The law does not prohibit people from engaging in political activity voluntarily off duty, without governmental compensation. Specific prohibitions include the following:

A. No officer or employee shall intentionally perform any prohibited political activity during any compensated time.

B. No office or employee shall intentionally use any property or resource of the governmental entity in connection with any prohibited political activity.

C. No officer or employee shall intentionally require any other officer or employee to perform any prohibited political activity (i) as part of that officer or employee’s duties, (ii) as a condition of employment, or (iii) during any compensated time off (such as holidays, vacation or personal time off).

D. No officer or employee shall be required at any time to participate in any prohibited political activity in consideration for that officer or employee being awarded additional compensation or any benefit, whether in the form of a salary adjustment, bonus, compensatory time off, continued employment or otherwise, nor shall any officer or employee be awarded additional compensation or any benefit in consideration for his or her participation in any prohibited political activity.

Section 70-5 of the ethics legislation defines “officer” as an elected or appointed official, regardless of whether the official is compensated. An “employee” is defined as a “full-time, part-time, or contractual employee.” Remember, however, that independent contractors are not contractual employees, so they are not barred from receiving gifts under this law.

The statute defines “compensated time” as any time worked by or credited to an employee that counts toward any minimum work time requirement imposed as a condition of employment, but does not include any designated holiday or any period when the employee is on a leave of absence. 4 ILCS 430/1-5. If an employee wants to voluntarily engage in political activities while on vacation, personal or compensatory time off, he or she may do so.

The following constitute prohibited political activities:

- A. Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.
- B. Soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment tickets for any political fundraiser, political meeting, or other political event.
- C. Soliciting, planning the solicitation of, or preparing any document or report regarding anything of value intended as a campaign contribution.
- D. Planning, conducting, or participating in a public opinion poll in connection with a campaign for elective office or on behalf of a political organization for political purposes or against any referendum question.
- E. Surveying or gathering information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.
- F. Assisting at the polls on election day on behalf of any political organization or candidate for elective office or for or against any referendum question.
- G. Soliciting votes on behalf of a candidate for elective office or a political organization or for or against any referendum question or helping in an effort to get voters to the polls.
- H. Initiating for circulation, preparing, circulating, reviewing, or filing any petition on behalf of a candidate for elective office or for or against any referendum question.
- I. Making contributions on behalf of any candidate for elective office in that capacity or in connection with a campaign for elective office.
- J. Preparing or reviewing the responses to candidate questionnaires.
- K. Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question.
- L. Campaigning for any elective office or for or against any referendum question.
- M. Managing or working on a campaign for elective office or for or against any referendum question.

- N. Serving as a delegate, alternate, or proxy to a political party convention.
- O. Participating in any recount or challenge to the outcome of any election.

9. **DON'T EXPEND PUBLIC FUNDS TO ADVANCE A PRIVATE PURPOSE OR A REFERENDUM**

Occasionally, township officials become involved in political campaigns to support candidates or referenda to advance the interests of their townships. For example, the Township Code permits townships to put advisory questions of public policy on the ballot. 60 ILCS 1/30-205. In addition, other provisions of the Township Code require voter approval at a referenda prior to embarking on certain actions, such as a township open space plan. 60 ILCS 1/115-20. While township officials still have their First Amendment rights to free speech, they must be aware of those laws which require them to keep their interests as public township officials separate from their personal interests.

Article VIII, section 1(a) of the Illinois constitution prohibits the expenditure of public funds for private purposes. This constitutional prohibition, especially when construed with other ethics legislation, makes it clear that public funds cannot be expended to advance political interests, even if those political interests are closely aligned with the township's mission. The State Officials and Employees Ethics Act, made applicable to units of local government through 5 ILCS 430/70-5, requires townships to adopt ordinances prohibiting the use of township funds for all types of political activities, including campaign strategizing, petition checking, referendum polling, and the preparation of campaign literature. Accordingly, a township board cannot use township funds to support or oppose any candidate or referendum, even if the candidates are unopposed or the referendum was initiated by the township.

However, the Illinois Election Code does expressly permit public entities to expend public funds for the narrow purpose of disseminating "factual information relative to" a referendum. 10 ILCS 5/9-25.1. The challenge for most township officials is in navigating the fine line between what information is factual and what information is potentially argumentative or political advocacy. Many township board members view a township open space referendum as such an integral part of their mission that they have a difficult time understanding that they may not, and why they may not, use township funds or resources to promote "yes" votes on the referendum which will provide needed dollars to acquire the open space their constituents want. Because of the strict rules that govern the expenditure of public funds, township officials who wish to remain out of trouble with the law are well-advised to take the most conservative course possible and maintain a strict wall of separation between the township as a governmental entity and any pro- or anti-referendum organization.

What can township officials do to legally support a referendum? A township, as an entity, may not disseminate information urging any elector to vote for a referendum. This is considered impermissible advocacy which would violate the Constitutional and statutory limitations regarding the use of public funds. However, it is important to note that township officials **can** engage in advocacy on their own time and without expending township funds. If a township

official wants to walk door-to-door to encourage voters to vote for a referendum, while passing out materials that she created and copied at her own expense, such action is entirely legal.

Townships can also legally disseminate “factual information” because such activity is considered to be educational or informational. Townships may legally disseminate factual information regarding the referendum, as long as that information does not cross the line into advocacy. Appropriate factual information would include citing official statistics about enrollment in township programs, demographics, projections, results of community surveys of township priorities, the age and status of existing buildings and facilities. Avoid drawing opinionated conclusions such as that the township “must have” a particular “valuable” or “badly needed” improvement. The law also allows the township to describe what it would acquire with the proceeds of the open space bond issue, what the date and hours of the election are, etc.

However, townships must be careful not to distribute information that is considered to be advocacy, which would include a direct appeal to someone to vote in favor or against the referendum, including such language as “vote yes”, “support”, or “favor”. Impermissible advocacy would also include campaigning for the referendum by describing the referendum in positive, “advertising”-type terms, such as “good for our future”, “badly needed”, or by vividly describing the demise of township programs and other dire consequences if the referendum fails. Advocacy also includes indirect appeals to someone to vote favorably, including information which is so “slanted” so as to encourage a favorable vote on the referendum.

A. In summary, to advance a referendum, townships may:

1. Create and distribute factual information regarding official statistics about enrollment in township programs, demographics, projections, results of community surveys of township priorities, the age and status of existing buildings and facilities
2. Pay for the creation and distribution of such information with public funds.

B. When engaging in referendum activities, townships cannot:

1. Use township time or employees
2. Use township facilities, including but not limited to copy machines, furniture, rooms, office equipment, supplies, faxes, and telephones
3. Use township computers or e-mail addresses

C. However, township officials, as citizens, may:

1. Engage in advocacy activities in their spare time

2. Pass out materials they generated on their own time and at their own expense
3. Create a township foundation, separate and distinct from the township, to raise and expend funds supporting township issues
4. Send e-mails regarding their position from their personal e-mail accounts.

10. BE CAREFUL ABOUT “PERKS” OF HOLDING OFFICE.

Expense reimbursement
Use of township property and equipment

11. UNDERSTAND TOWNSHIP PURCHASING AND BIDDING LAWS.

Before making certain purchases and before entering into certain service and materials contracts, townships and road districts must initiate a competitive bidding process for selecting the provider. The following three township bidding statutes establish the basic obligations. Township officials should consult with TOI or their township attorney before acting pursuant to these statutory provisions.

A. Purchase of Services, Materials, Equipment, and Supplies for Townships in Excess of \$20,000 (60 ILCS 85-30)

Any purchase by a township for services, materials, equipment, or supplies in excess of \$20,000 (other than professional services) shall be contracted for in one of the following ways:

- (1) By a contract let to the lowest responsible bidder after advertising for bids at least once (i) in a newspaper published within the township, or (ii) if no newspaper is published within the township, then in one published within the county, or (iii) if no newspaper is published within the county, then in a newspaper having general circulation within the township;
- (2) By a contract let without advertising for bids in the case of an emergency, if authorized by the township board.

These requirements do not apply to townships contracting with the federal government. 60 ILCS 85-30. Additionally, it has been held that a township hospital may contract with an adjoining nursing home without competitive bidding. *Bohleber v. Carmi Township Hospital*, 30 Ill.App.3d 969 (5th Dist. 1975).

B. Road District Maintenance Contracts in Excess of \$20,000 (605 ILCS 5/6-201.7, 605 ILCS 5/6-408)

The highway commissioner is responsible for the construction, maintenance and repair of roads within the district, letting contracts, employing labor and purchasing material and machinery therefore, subject to certain limitations. 605 ILCS 5/6-201.7 Contracts for

constructing and repairing roads and bridges on road district lines shall be let by the highway commissioners of the two districts; the commissioners shall meet and act together when taking action upon the letting of such contract for the construction or repair of such roads and bridges, or acceptance of the work. 605 ILCS 5/6-408. Except for professional services, when the cost of construction, materials, supplies, new machinery or equipment exceeds \$20,000, the contract for such construction, materials, supplies, machinery or equipment shall be let to the lowest responsible bidder after advertising for bids, at least once, and at least 10 days prior to the time set for the opening of such bids, in a newspaper published within the township or road district, or, if no newspaper is published within the township or road district then in one published within the county, or if no newspaper is published within the county then in a newspaper having general circulation within the township or road district, but, in case of an emergency, such contract may be let without advertising the bids. For purposes of this Section, "new machinery or equipment" shall be defined as that which has been previously untitled or that which shows fewer than 200 hours on its operating clock and that is accompanied by a new equipment manufacturer's warranty. 605 ILCS 5/6-201.7.

C. Township Waterworks Construction Projects in Excess of \$20,000 (60 ILCS 1/205-105(a))

All contracts for construction work on township waterworks facilities whose estimated cost will exceed \$20,000 shall be let to the lowest responsible bidder after publication of notice for bids. Notice for bids shall be published once in a newspaper published and having general circulation in the township, if there is one. If there is no such newspaper, notice for bids shall be published in a newspaper published and having general circulation in the county. Notice for bids shall be published at least 10 days before the date set for receiving bids. Bids shall be opened and publicly read, and an award shall be made to the lowest responsible bidder within 15 days after the receipt of bids. 60 ILCS 1/205-105(a).

For construction contracts, once the township or road district has initiated the process through the required notices above, if the contract is to be awarded, it must go to the lowest responsive bid submitted by a "responsible" contractor. 60 ILCS 1/85-30; 605 ILCS 5/6-201.7; 60 ILCS 1/205-105(a).

12. UNDERSTAND THE POWERS AND LIMITS OF YOUR PARTICULAR OFFICE

Be familiar with the provisions of the Township Code that specify the various powers of the township players, including the supervisor, township board, electors, township auditor, highway commissioner and the township clerk. Also remember the limitations of Dillon's Rule.

13. DON'T REMOVE SOMEONE FROM OFFICE WITHOUT DUE PROCESS

Where a township board member has five or more consecutive unexcused absences, the township board may declare a vacancy in the office. 60 ILCS 1/80-10(c). While it is not mandatory to have prescribed rules in place prior to exercising the right to remove an absentee board member pursuant to this provision, because holding public office is a significant right, the

authors strongly suggest that a township enact specific rules to further support such a decision if one is made. Such rules should specify what constitutes an "unexcused" absence and what procedures will be used to determine whether an absence is excused or unexcused. Township boards should be careful not to discriminate between public officials in enforcing an absence policy. It would be difficult to claim that one trustee who went to Florida for three months in the winter and missed six meetings was "excused" for those absences, but that another trustee who missed six consecutive meetings over the summer because they conflicted with her coaching responsibilities was "unexcused", unless the basis for an excused absence was clearly specified in advance.

The Illinois Supreme Court has held that elected officials have a property right in their position which would require due process notice and hearing protections as a prerequisite to removal from office, by authority granted through statute or ordinance, prior to the end of the term of office. East St. Louis Fed'n of Teachers, Local 1220 et al. v. East St. Louis School Dist. No.189 Financial Oversight Panel, 178 Ill.2d 399, 687 N.E.2d 1050 (1997). The due process notice and hearing do not provide elected officials with immunity from removal of office. If the elected officials are found to be guilty of misconduct, or have not complied with other prerequisites for holding office such as maintaining proper residence, they can be legally removed while they are serving their term. The due process pre-termination notice and hearing are simply implemented to safeguard against mistaken or unjustified actions of removal carried out against an elected official. Due process can be accomplished by a court hearing or, where the power appears to rest with the legislative body, the hearing can be conducted before the township board.

14. DO NOT ENGAGE IN A CONFLICT OF INTEREST

Township and road district officers are prohibited from having interests in township/road district contracts. 50 ILCS 105/3. No township/road district officer or employee may be interested directly or indirectly, in his or her own name or in the name of any other person, association, trust, or corporation, in any contract for work, materials, profits of work or materials, or services to be furnished or performed for the township/road district or for any person operating a public utility wholly or partly within the territorial limits of the township/road district. 60 ILCS 1/85-45; 605 ILCS 5/6-411.1.

A. Indirect Conflicts

It is important to note that these sections prohibit both direct and indirect interests in township contracts. One example of an indirect interest is when a township officer is employed by a company that is seeking a township contract.

B. Contracting with Relatives

A public officer will not be considered to have violated these statutes, however, when the public entity lets a contract to a company owned by a relative, such as a spouse. Op. Att'y Gen. (Ill.) 93-014 (1993). Nor are the statutes violated if the public entity employs the officer's spouse.

People v. Simpkins, 45 Ill. App. 3d 202, 359 N.E.2d 828 (5th Dist. 1977); Hollister v. North, 50 Ill. App. 3d 56, 365 N.E.2d 258 (4th Dist. 1977).

C. Contracts that Benefit the Official as a Member of the Public

Further, the courts have determined that a public officer may benefit from his or her actions as an officer in the same manner as does the general public, without it being considered a statutory conflict. In Croissant v. Joliet Park Dist., 141 Ill.2d 449, 566 N.E.2d 248 (1990), a park district commissioner's vote to participate in a block grant program to improve an airport owned by the park district was challenged because the commissioner owned an aviation business that was a tenant of the airport. The Illinois Supreme Court ruled that the commissioner had not engaged in a prohibited act because he was not directly or indirectly financially interested in the transaction and because the only benefit flowing to the commissioner from his vote was the improvement of the airport, which benefited the public at large.

D. Conflicts Before a Contract is Executed

Judicial interpretation of the prohibitions specified in the Public Officer Prohibited Activities Act, 50 ILCS 105/3, confirms that public officials must be wary of conflicts related to contracts even before the contracts are executed. In People v. Savajano, 31 Ill. App. 3d 1049, 335 N.E.2d 553 (2d Dist. 1975), *aff'd*, 66 Ill.2d 7, 359 N.E.2d 475 (1976), the court upheld the conviction of a commissioner of the DuPage County Forest Preserve District who had a one-fourth interest in sixty acres of land that the district sought to acquire. The defendant had chaired committee meetings during which negotiations were conducted with his co-owners of the property. The negotiations resulted in an agreement regarding the purchase price and a committee recommendation to purchase the property. Before the purchase was approved by the entire commission, the defendant sold his interest in the property. Ultimately, the deal fell through. The defendant was indicted and convicted of having an improper interest in the contract. While the defendant had argued that a contract was never executed, therefore he could not have had an improper interest in a contract, the appellate court interpreted the statute broadly, construing "contract" to "include the whole bargaining process which leads up to the completion of a binding contract or agreement with the governmental agency." In so holding, the court found that the commissioner could have influenced the decision to purchase the property, and that he was in a position to boost the value of the land to his benefit. The court further noted that the defendant did profit from selling his interest even though the contract did not go through.

E. Abstention From Voting

A public officer can violate these statutory prohibitions without actually voting or acting on the contracts. In Peabody v. Sanitary District of Chicago, 330 Ill. 250, 161 N.E. 519 (1928), the sanitary district awarded a contract to the lowest bidder for the project, which happened to be a company of which the district's treasurer was a vice-president, director, and stockholder. The court held that the treasurer violated the prohibition against interests in contract, even though the treasurer did not vote on the award of the contract and was not directly involved in the letting of the contract. The court reasoned that, as the financial officer of the district, the treasurer could have been asked for an opinion as to whether the company was financially responsible, and thus

could have been called upon to act. The court found that "the question is not what [the treasurer] did, but what he might be called upon to do, which determines the application of the statute."

The rationale behind this opinion is consistent with the Illinois Supreme Court's later statement in Brown v. Kirk, 64 Ill.2d 144, 355 N.E.2d 12 (1976), which held that these statutes are designed to prevent the actual bad faith abuse of powers as well as "the creation of relationships which carry in them the potential of such abuse, by removing the possibility of temptation."

F. Consequences of a Prohibited Act

When a public officer votes on an action in which the officer has a prohibited interest, the entire action of the township may be rendered void. However, an action may still be void even if the interested party has not voted and has not been subjected to criminal charges. Mulligan v. Village of Bradley, 131 Ill. App. 3d 513, 475 N.E.2d eventually gave the appellate court the opportunity to comment on conflicts. Here, the former village president successfully urged the village board to create the position of village administrator, and then to hire him to fill the position. These actions were approved at a village board meeting over which the president presided, although the president abstained from voting on either motion. After the motions passed, the president resigned from his office and accepted the offer to serve as the village administrator for a three-year period. Two years later, the new village president, a political foe of the administrator, fired the administrator who promptly sued the village for breach of contract, among other things. In analyzing the ousted administrator's claim, the court held that the administrator's original contract with the village was void and unenforceable because it violated the statute prohibiting officers from having an interest in a municipal contract. The court, therefore, upheld the trial court's dismissal of the administrator's lawsuit.

A township official who violates any of these statutory provisions is guilty of a Class 4 felony. Additionally, the office shall become vacant. 50 ILCS 105/4.

15. DO NOT GET INVOLVED IN THE DAY TO DAY OPERATIONS OF THE TOWNSHIP WITHOUT AUTHORITY OF THE TOWNSHIP BOARD AND WITHOUT KNOWLEDGE OF THE SUPERVISOR AND/OR TOWNSHIP ADMINISTRATOR

Knowing the limitations and duties of your office, as outlined in the Township Code, will assist the township in running smoothly and will also help keep you out of unnecessary trouble.

16. UNDERSTAND THE RULES ABOUT DESTRUCTION OF PUBLIC RECORDS

The Local Records Act defines, a "public record" as any book, paper, map, photograph, or other official documentary material, regardless of physical form or characteristics, made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business and preserved or appropriate for preservation . . . as evidence

of the organization, function, policies, decisions, procedures, or other activities thereof, or because of the informational data contained therein.

Accordingly, all of the “records, books, and papers” of your Township” are subject to the Local Records Act, including, for example, municipal clerk’s minutes of the township meetings. There can, of course, be isolated instances in which the “public record” nature of certain documents, such as personal correspondence, is questionable. Nonetheless, given the possible penalties for violating the Local Records Act by unauthorized destruction or disposal of a public record, clerks should be careful not to dispose of any materials which could be considered public. When in doubt, keep the record!

The Local Records Act establishes two Local Records Commissions – one for Cook County and another for the remainder of the state. The primary function of both Commissions is to establish standards and procedures for the preservation, disposal and destruction of important local records. The Local Records Commissions are empowered to issue binding regulations which apply to municipal clerks.

Both Commissions have issued regulations which establish (a) procedures for compiling and submitting lists and schedules of public records proposed for disposal, (b) procedures for the physical destruction or other disposition of such records, and (c) standards for the preservation of public records, when deemed advisable, by photography, microphotographic processes or digitized electronic format. The regulations also permit the Secretary of State to retain any original records and deposit them in the State Archives, State Historical Library, a university library or with an historical society, museum or library.

While both Commissions are authorized to issue regulations governing the preservation and disposal of records, the Secretary of State’s Office has a Local Records Unit which oversees the day-to-day administration of the Local Records Act. Ultimately, the Local Records Unit of the Secretary of State’s Office approves the destruction and disposal of public records. However, the Local Records Commission provides significant guidance to public entities regarding the types of documents and records that should be maintained.

No public entity or public official may dispose of a public record without prior written approval from the appropriate Local Records Commission (*i.e.*, the Local Records Unit of the Secretary of State’s Office). When a Township wants to destroy or dispose of public records, it must contact the Local Records Unit. A representative will contact the Township to discuss the disposition or destruction of those records.

As an initial step, you will be required to prepare an “inventory worksheet” listing the nature and types of records your Township maintains. The Local Records Unit will explain the procedure to follow in inventorying public records, how to prepare the inventory worksheet, and will usually assist in inventorying your records.

Once you have prepared an inventory worksheet, you should submit it to the Local Records Unit together with two (2) signed Application for Authority to Dispose of Local

Records forms. The Local Records Unit will usually also assist in the preparation of applications.

The Local Records Unit will then determine which what public records have no administrative, legal, research or historical value and may be destroyed or otherwise disposed of and will authorize or deny destruction or disposal. If an application for destruction is approved, the Local Records Unit will forward a copy of the approved application to the Township together with Records Disposal Certificates.

The Township must then prepare and submit a Records Disposal Certificate to the Local Records Unit showing the date upon which the records will be disposed of and the number of the application approved by the Local Records Unit. If requested, the Local Records Unit will also advise as to the appropriate method of destruction or disposal.

Any unauthorized disposal or destruction of a public record is a felony. Possible penalties include imprisonment for not less than 1 nor more than 3 years, a fine of up to \$25,000 and removal from and disqualification for office.

17. UNDERSTAND THE LEVY ORDINANCE AND THE DIFFERENCE BETWEEN THE LEVY AND THE BUDGET

The township board shall within or before the end of the first quarter of each fiscal year (June 30 for most) adopt a combined annual budget and appropriation ("B and A") ordinance. A quick reference of the Township Budget and Appropriation Ordinance Steps are as follows:

Step 1: The township board must at least 30 days before the public hearing required by Section 3 of the Illinois Municipal Budget Law, prepare or cause to be prepared a tentative B&A ordinance and file the ordinance with the township clerk.

Step 2: The township clerk must make the tentative B&A ordinance available for public inspection at least 30 days before final action on the ordinance. The required public hearing must be held on or before the last day of the first quarter of the fiscal year before the township board.

Step 3: Notice of the hearing must be by publication in the township at least 30 days prior to the time of the hearing. If there is no newspaper published in the township, notice of such public hearing may be given by posting notices in 5 of the most public places in the township.

Step 4: It is the duty of the township clerk to arrange for the public hearing. The township board at the public hearing may adopt all or part of the tentative B&A ordinance, as the township board deems necessary.

Step 5: File a certified copy of the adopted B&A ordinance with the county clerk. 50 ILCS 330/3; 60 ILCS 1/80-60.

A similar process exists for the Road District:

Step 1: The highway commissioner at least 30 days prior to a public hearing shall prepare or cause to be prepared a tentative B&A ordinance and file the same with the clerk of the township.

Step 2: The township clerk shall make the tentative B&A ordinance conveniently available to the public for inspection for at least 30 days prior to final action.

Step 3: Notice of the public hearing shall be given by publication (see details above), and it shall be the duty of the clerk of the road district (township clerk) to arrange for the public hearing.

Step 4: The township board shall adopt at the public hearing the tentative B&A ordinance, or any part as the board deems necessary.

Step 5: File a certified copy of the adopted B&A ordinance with the county clerk. 605 ILCS 5/6-501(c).

The tax levy is separate from the budget process. It is the amount of revenue (in dollars) that a township expects to receive through the taxation of real estate. The principal function of the levy is to fund that portion of the budget that is not funded by other sources, and may be for the following purposes:

- Prosecuting or defending suits
- Maintaining cemeteries
- Maintaining hospitals
- Operating a committee on youth
- Providing mental health services
- Operating a committee for senior citizen services
- Specific construction and equipment
- Other purposes authorized by law

The township's levy ordinance must be adopted by the township board and filed with the county clerk before the last Tuesday in December of each year. 35 ILCS 200/18-15. The road district's levy is first determined by the highway commissioner and then adopted by the township board (which may not amend the levy ordinance), also by the last Tuesday in December. 605 ILCS 5/6-501.1¹. These filings must include 1) a Certification of Tax Levy Ordinance; 2) a Tax Levy Ordinance; and 3) a certification by the Township Supervisor that the Truth-in-Taxation provisions (discussed below) are followed. 35 ILCS 200/18-90.

¹ NOTE: One-half of the tax required to be levied pursuant to Section 6-501 of the Highway Code, on the property lying within a municipality in which the streets and alleys are under the care of the municipality, shall be paid over to the treasurer of the municipality, to be appropriated to the improvement of roads or streets, either within or without the municipality and within the road district under the direction of the corporate authorities of the municipality. However, when any of the tax is expended beyond the limits of the municipality it shall be with the consent of the highway commissioner. If any municipality has not appropriated the taxes received by it as aforesaid for the improvement of roads or streets within one year from the date of the receipt thereof, then the unappropriated portion of such taxes shall be paid by the municipal treasurer to the road district treasurer, to be used for road purposes within the road district. 605 ILCS 5/6-507.

The taxes are generally not collected until the following fiscal year, except for those townships in counties that have adopted early tax distribution procedures (e.g. Cook County). Cook County townships normally receive some tax revenue as early as the February following the adoption of the levy ordinance in December. Distribution procedures vary from county to county, however. It is important to note that a township will not always get what it levies, as explained further below.

Under Illinois law, the township must adhere to certain procedural requirements before it can pass any tax levy ordinance. If a township expects to adopt an aggregate levy in excess of 105% of the amount of tax revenue extended in the prior year, it must give public notice of that fact through a newspaper and also hold a public hearing regarding that intent. Debt service (bonds) and election costs are not included in the 105% determination. 60 ILCS 1/235-13; 35 ILCS 200/18-70. The notice must state the amount of property tax extended by the township during the previous year; the amount proposed for levy for the current year; the percent increase; the date, time and location of the hearing; the amount of prior and requested debt service; and the total of all taxes to be extended and the percent change thereof. Notice requirements, and other truth-in-taxation requirements are very precise, therefore, it is very important to read the statute carefully or consult an attorney before adopting a levy in excess of 105% of the prior year's levy. *See generally* 35 ILCS 200/18-55 to 100.

A HALF DOZEN WAYS TO KEEP YOUR EMPLOYEES FROM SUING YOU (OR HOW TO MAKE SURE THAT YOU WIN IF THEY DO)

By: Margaret Kostopulos

1. Today's Applicant is Tomorrow's Litigant

- A. Review and Revise Employment Application
 - EEOC Statement
 - Employment At Will Statement
 - Invitation to Request Accommodation
 - Military Background Inquiry With Statement that Dishonorable Discharge is not a Bar to Employment
 - Arrest or Conviction Statements (Not to Include Expunged or Sealed Records)
 - Certification of Accuracy of Information
- B. Interviewing Traps
 - Be Watchful of What You Ask
- C. Document Abuse Based on Disparate Documentation Requirements
 - Requests for more or different documents than are required of others or refusing to accept tendered documents that appear reasonable can be unfair immigration related employment practices.

2. Maintain an Up-To-Date Employee Manual

- A. Necessary Provisions
 - Statement of Purpose/ Employment At Will
 - Statement Prohibiting discrimination
 - Statement Prohibiting Sexual Discrimination and Harassment
 - Statement Prohibiting Retaliation
 - Statement Regarding Reasonable Accommodation
 - Internal Complaint Procedures
 - Family and Medical Leave Policy and VESSA Policy
 - Policy Regarding Vacation, Holidays, Sick Leave and Other Paid Time Off
 - Attendance and Hours of Work Policies
 - Guidelines for Conduct and Workplace Violence
 - Use of Township Property/ Acceptable Use Policy
 - Acknowledgment of Receipt
- B. Distribution of Handbooks and Revisions
 - Who and How

3. Conduct Training or Re-Training on Anti-Discrimination Policies

- A. Educate employees and managers on policy and enforcement obligations
- B. Ensure employees follow company policies and procedures relating to complaints of harassment
- C. Promptly conduct investigations
- D. Do not ignore actual reports or rumors of harassment, discriminatory or inappropriate conduct
- E. Do not jump to conclusions
- F. After the investigation is complete, inform the alleged victim of the conclusions and what, if any, actions will occur
- G. Take corrective action when appropriate
- H. Document the complaint and subsequent actions
- I. Inform the supervisors of the outcome

4. Maintain Proper Personnel Files

- A. What to Include in a Personnel File
 - All hiring information
 - All performance reviews and appraisals
 - All disciplinary records and supporting documentation
 - Miscellaneous record of wage and assignment changes
- B. What to Keep Out of Personnel Records
 - Medical records or records containing medical information
 - Information that tends to identify an employee's race, color, religion, gender, or other facts which are unlawful to use to make employment decisions
 - Documents concerning employment related lawsuits or charges
 - Sexual harassment investigation documentation (unless it is the file of the harasser)
 - Grievance/Complaint documents
 - DCFS Investigations when investigation resulted in an unfounded or unsubstantiated finding

5. Conduct Defensible and Thorough Investigations of Misconduct

- A. Procedure for Misconduct Investigations
 - Identify appropriate investigator
 - Understand the pros and cons to having your attorney investigate
 - Provide investigative training to those serving as investigator

Interview complainant or victim as soon as possible
Obtain written and signed statement from complainant or victim whenever possible
Identify all potential witnesses
Interview witnesses
Provide a witness for witness interviews
Tape record interviews whenever possible
Seek follow up signed statements from witnesses after interview
Interview accused employee last
Prepare written results of investigation addressing facts only
Avoid opinion or extraneous observations - address those separately
Understand and consider the tenets of progressive discipline and follow them

- B. Decision Making Post-Investigation
Review investigation report
Review employer records for record of similar misconduct and discipline issued to maintain consistency
Issue a clear letter describing the results of the investigation to the complainant or victim
Issue discipline with record of basis for such and maintain in personnel file
Obtain signature of individual on disciplinary form

6. Conduct Evaluations on at Least an Annual Basis

- A. Maintain a Valid Evaluation Instrument
Include expectations, duties and goals based on relevant job descriptions
Provide a section for evaluator to note whether employee meets, exceeds or does not meet these expectations
Provide a section for evaluator to note areas requiring improvement or correction
Train evaluators on how to complete the instrument
Allow supervisors sufficient time to observe the subject employee
- B. Avoid the Inflated Review
“This employee is great - now let’s fire him.”
- C. Require Employee Acknowledgment
Review the evaluation with the employee
Require signature
- D. Take corrective action based on evaluations immediately