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Local Governments UPDATE

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REMINDER: LOCAL GOVERNMENTS MUST COMPLETE AN EMPLOYMENT ELIGIBILITY VERIFICATION FORM ("FORM I-9") FOR ALL EMPLOYEES, INCLUDING ELECTED OFFICIALS

By Nanci N. Rogers & Joe E. Keavy

Pursuant to the Immigration Reform and Control Act of 1986 ("IRCA") employers are prohibited from hiring illegal aliens and required to enforce the law by verifying the employment eligibility and identity of all employees using the Form I-9. Employers, including local governments, must complete a Form I-9 for every employee hired after November 6, 1986. Even though elected officials are not "hired" as defined in the applicable IRCA regulations, the U.S. Citizenship and Immigration Services requires local governments to complete a Form I-9 if the elected official receives compensation or other remuneration for his/her civic services.

To comply with the law, employers must verify the identity and employment authorization documents an employee presents to determine whether the documents appear to be genuine and pertain to the individual, and record the document information on the Form I-9. A list of acceptable identification and eligibility documents can be found on the Form I-9. Section 1 of the Form I-9 must be completed by the employee at the time of hire. Section 2 must be completed by the employer within three business days from the date of the hire. In addition, employers are required to retain an employee's completed Form I-9 for three years, or until one year after the employee is

separated from employment, whichever is later.

Failure to properly complete and maintain all employee Form I-9 records can result in civil fines to the employer ranging from \$110 to \$1,100 per form. Five factors are considered when determining the amount of fines to impose: the number of employees compared to the number of violations; good faith effort by the employer to comply with the Form I-9 requirements; the seriousness of the violations; whether the violations involved unauthorized workers; and the employer's history of prior violations.

If you have any questions regarding Form I-9 or the employment eligibility and verification process, please contact any Robbins Schwartz attorney.

APPELLATE COURT UPHOLDS HOME RULE MUNICIPALITY'S ABILITY TO CREATE PSEBA HEARING PROCESS

By Susan W. Glover

The issue of determining whether a police officer or firefighter is eligible for benefits under the Public Safety Employee Benefits Act (PSEBA) has plagued municipalities in recent years as the determination of eligibility has become more and more tied to the findings of either fire or police pension boards outside of the control of the municipality. To make matters worse, these boards often are highly favorable to the employee. However, a recent case by the Illinois Appellate Court for the First District affirmed a home rule entity's ability to create a separate review process for PSEBA claims by employees, offering more control over

when a disabled employee is entitled to the long term insurance benefits provided by PSEBA. The Illinois Supreme Court has previously held that non-home rule units of government do not have the authority to create a separate administrative review process to determine eligibility for PSEBA benefits. *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012.

The case *Pedersen v. Village of Hoffman Estates*, 2014 IL App (1st) 123403, rehearing denied 2014 IL App (1st) 123402, considered a firefighter's claim that his hearing loss was caused by his duties as a firefighter in the Village. The firefighter asserted that he suffered an injury after responding to a tanker truck fire when another firefighter mistakenly turned on a nearby fire engine's siren while the plaintiff was in close proximity to the engine. He claimed that this siren, coupled with the fact that he wore hearing aids which amplified the sound, injured his ears to the point of him no longer being able to respond to fire calls. The firefighter filed a workers' compensation claim and sought a duty related disability before the fire pension board. He was granted a duty related disability and settled his workers compensation claim. He then petitioned the Village for PSEBA benefits. The Village had previously established a review process for PSEBA claims which provided for the village manager to hold a hearing to determine whether the employee was eligible for PSEBA benefits. At the conclusion of the PSEBA hearing, the village manager denied the plaintiff benefits finding that he was not responding to what is reasonably believed to be an emergency, as the Plaintiff was merely cleaning up an accident scene after responding to the emergency.

After being denied the PSEBA benefits, the firefighter filed suit challenging both the Village's ability to establish an administrative procedure for determining claims for PSEBA benefits and his denial of the benefits. Not surprisingly, the plaintiff argued that the fire pension board's finding that he was eligible for a duty-related disability pension prohibited the Village from finding that he was ineligible for PSEBA benefits. The circuit court found that the Village was permitted to establish an alternate hearing process for PSEBA benefits as it was not bound by the fire pension board's findings due to the different consideration for benefits under the two Acts. It also found that the plaintiff's injury did not occur in response to an emergency as he was

cleaning up the scene of the fire at the time of the injury. The circuit court further found that the sounding of the siren was unforeseen and did not involve imminent danger to persons or property requiring an immediate response by the plaintiff. Because of these findings, the plaintiff was ineligible for PSEBA benefits.

The plaintiff appealed the circuit court decision and received a split finding in the appellate court. The appellate court found that in this instance, the village manager was incorrect in its finding that the firefighter was ineligible for PSEBA benefits. However, most importantly, the appellate court upheld the village's ability to establish an administrative hearing process to review PSEBA claims. The appellate court found that the Illinois Constitution permitted home rule municipalities to establish such a process, subject to judicial review. It noted that benefits under the Fire Pension Act and PSEBA have different standards for eligibility. Therefore, the Village was not bound by a pension board's finding in determining eligibility for PSEBA.

A recent Second District Appellate Court decision, *Village of Vernon Hills v. Heelan*, 2014 IL App. 120823, upheld an officer's argument that a pension board duty related disability award prevents a municipality from denying PSEBA. However, we believe that this *Hoffman Estates* decision clarifies the uncertainty that previously existed as to whether a separate review process could be created to review PSEBA claims. With this ruling, we recommend establishing a separate hearing process for home rule entities as another avenue for reviewing PSEBA claims independent from the fire and police pension boards. This process will allow the municipality to build a record unrelated to the pension hearing record upon which to base your decision related to PSEBA claims. If your municipality has not yet done so, please contact your Robbins Schwartz attorney for options tailored to your municipality.

**ILLINOIS LEGISLATIVE UPDATE –
JULY 28, 2014**

By Kathleen Elliott

The legislation discussed below is not a comprehensive list of all legislation affecting local governments, but those of significant interest.

AWAITING ACTION BY THE GOVERNOR

**HOUSE BILL 0008
HUMAN RIGHTS-PREGNANCY ACCOMMODATION
REQUIREMENTS**

APPLIES TO LOCAL GOVERNMENTS. Amends the Illinois Human Rights Act. Provides that with respect to employment, it is a civil rights violation for an employer to refuse to provide reasonable accommodations for an employee for medical or common conditions related to pregnancy or childbirth, if she so requests, with the advice of her health care provider. Provides that the term "reasonable accommodations" means actions which would permit such an employee to perform in a reasonable manner the activities involved in the job or occupation including an accessible worksite, acquisition or modification of equipment, job restructuring, and modified work schedule. Provides that "reasonable accommodations" includes time off to recover from conditions related to childbirth and leave necessitated by pregnancy, childbirth, or medical or common conditions resulting from pregnancy or childbirth. Provides that the reasonable accommodations shall be undertaken provided that those actions do not impose an undue hardship on the business, program, or enterprise of the entity from which the actions are requested. Provides that it is a human rights violation for an employer to require a job applicant or employee affected by pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth to accept an accommodation when the applicant or employee did not request an accommodation and the applicant or employee chooses not to accept the employer's accommodation.

**HOUSE BILL 961
COMPTROLLER TO DEPOSIT LOCAL GOVT INCOME
TAX SHARE WITHIN 60 DAYS**

Amends the State Revenue Sharing Act and the Illinois Income Tax Act. Provides that the transfers from the General Revenue Fund to the Local Government Distributive Fund must be made no later than 60 days after the State Comptroller receives the certification of the amounts from the Treasurer.

**HOUSE BILL 3885
SALES TAX INFORMATION TO MUNICIPALITY**

Amends 35 ILCS 20/35-1 to allow the Department of Revenue to provide municipality with an individual business's sales and use tax information.

**HOUSE BILL 4769
PUBLIC CONSTRUCTION BOND-SURETY
REQUIREMENTS**

Amends 30 ILCS 550/1 - Public Construction Bond Act. Provides that the surety on a bond shall be a company with a certificate of authority from the Department of Insurance specifically authorizing it to execute surety bonds and a financial strength rating of at least A- as rated by A.M. Best Company, Inc., Moody's Investors Service, Standard & Poor's Corporation, or a similar rating agency.

**HOUSE BILL 5622
USE OF WAGE PAYMENT PAYROLL CARD
REQUIREMENTS**

APPLIES TO LOCAL GOVERNMENTS. Amends the Illinois Wage Payment and Collection Act, 820 ILCS 115/. Establishes requirements for the use of payroll cards by employers. Requires certain disclosures to be made to employees before using payroll cards. Requires the offer of an alternative means of payment to be available.

Requires disclosure to employees to include that payment by payroll card is voluntary and list other methods of payment available. Requires an explanation of how an employee may obtain, at no cost, information concerning the employee's account. Requires a payroll card system to allow withdrawal of wages at least twice a month. Provides that an employer's obligations regarding

payroll cards to end 60 days after the employer-employee relationship ends. Requires certain disclosures upon termination of the employer-employee relationship. Establishes limits on fees. Provides that a payroll card program must provide for telephone access to ascertain the account balance at any time without incurring a fee. Provides that a declined transaction must be allowed twice per month without fee. Authorizes commercially reasonable fees with regard to additional declined transactions during that month.

HOUSE BILL 5623
LOCAL GOVERNMENT-ELECTED OFFICIALS
REQUIRED TO HAVE EMAIL ADDRESS

Amends the Local Records Act. Provides that a unit of local government or school district that serves a population of less than 1,000,000 that maintains an Internet website other than a social media or social networking website shall post to its website for the current calendar year a mechanism, such as a uniform, single email address, for members of the public to electronically communicate with elected officials of that unit of local government or school district. Requires the information to be easily accessible from the unit of local government's or school district's home page through a hyperlink. Preempts home rule. Amends the State Mandates Act to require implementation without reimbursement.

HOUSE BILL 5709
ALLOWS REAL ESTATE VALUATION BY MUNICIPAL EMPLOYEES

Amends the Real Estate Appraiser Licensing Act of 2002, 225 ILCS 458/5-5. Provides that municipal engineers and employees who meet specified requirements are not required to have a license under the Real Estate Appraiser Licensing Act of 2002 to complete waiver valuations as approved by the Federal Highway Administration or valuations performed by a municipal engineer who has completed coursework that is sufficient for his or her waiver valuations to be approved by the Federal Highway Administration and who is a registered professional engineer under the Professional Engineering Act of 1989.

HOUSE BILL 5785
ANNEXATION AND CONSOLIDATION OF UNITS OF GOVERNMENT

Amends the following Acts and Codes to provide that, upon a majority vote of the boards of the entities created under the following Acts and Codes in favor of the proposition to annex or consolidate, and if the governing authorities of the governmental unit assuming the functions of the former entity agree by resolution to accept the functions (and jurisdiction over the territory, if applicable) of the consolidated or annexed entity, then that entity shall cease: Property Tax Code, Counties Code, Cemetery Maintenance District Act, Civic Center Code, Public Health District Act, Tuberculosis Sanitarium District Act, Museum District Act, Illinois International Port District Act, Solid Waste Disposal District Act, Street Light District Act, Surface Water Protection District Act, Water Service District Act, Water Authorities Act, and the Water Commission Act of 1985. Provides that on the effective date of the annexation or consolidation, all of the rights, powers, duties, assets, liabilities, indebtedness, obligations, bonding authority, taxing authority, and responsibilities of the entity shall vest in and be assumed by the governmental unit assuming the former entity's functions. Provides that the rights of the employees of the former district, commission, or authority once the former district, commission, or authority is consolidated into another governmental unit.

SENATE BILL 0345
PTELL - EXCEPTIONS TO NEW RATES

Amends the Property Tax Code, 35 ILCS 200/18-190. Provides that the levies authorized under the Illinois Pension Code for social security or medicare shall not be considered new rates. Provides that the amendatory Act does not authorize a taxing district to increase its limiting rate or its aggregate extension without first obtaining referendum approval. Effective immediately.

SENATE BILL 2583
VEHICLE CODE CITATIONS-SIGN & DRIVE

Amends the following sections of the Illinois Vehicle Code: 625 ILCS 5/3-711, 5/6-601, 5/6-306.3, 5/110-15, 5/6-308. Provides that for a traffic violation that is a petty offense as defined by the Unified Code of Corrections, no bond shall be required and personal recognizance shall be acceptable unless prohibited by law, except as to business offenses or to violations of the wheel and axle load limits of the Illinois Vehicle Code.

Provides that the procedure for traffic violations that aren't petty offenses shall be governed by Supreme Court Rules. Provides that if a person fails to appear for a court date, the court may continue the case for a minimum of 30 days and notify the person at their address of record with the Secretary of State. Provides that if, on the second court date, the person has not appeared, paid in full the amount necessary to satisfy the citation, or satisfied the court that their appearance, through no fault of their own, is impossible, the court shall order the person's license suspended. Provides that this suspension shall be entered by the Secretary of State as a Failure to Appear suspension, and that this suspension may not be lifted, nor any other permit issued to the person, until the satisfaction of the judgment against the person.

Amends the Unified Code of Corrections. Provides that the Supreme Court may prescribe a uniform schedule of bail amounts in all but felony offenses. Provides that bail shall not be required for petty offenses.

SENATE BILL 2695
CRIMINAL CODE - OFFICIAL MISCONDUCT

Amends the Criminal Code of 2012, 720 ILCS 5/33-3, concerning official misconduct. Provides that an employee of a law enforcement agency commits misconduct when he or she knowingly uses or communicates, directly or indirectly, information acquired in the course of employment, which obstructs, impedes, or prevents the investigation, apprehension, or prosecution of any criminal offense or person. Provides that an element of the offense requires that the defendant intends to obstruct, impede, or prevent the investigation, apprehension, or prosecution of the criminal offense or person.

Provides that an employee who violates this provision is guilty of a Class 3 felony and shall forfeit his or her office or employment.

Provides that nothing in the new offense shall be construed to impose liability for communicating to a confidential resource, who is participating or aiding law enforcement, in an ongoing investigation.

SENATE BILL 2829
CIVIL PROCEDURE - ADMINISTRATIVE APPEALS – ATTORNEYS FEES

Amends the Code of Civil Procedure, 735 ILCS 5/5-120. Provides that in and administrative review action under the Administrative Review Law, if the court reverses the decision of a municipal code hearing officer that imposes a fine or penalty against the owner of a single-family or multi-family residential dwelling for a violation related to the condition or use of that residential property, then the court may award the plaintiff all reasonable costs, including court costs and attorney's fees, associated with the action if the court finds that: (i) the decision of the hearing officer was arbitrary and capricious; or (ii) the defendant failed to file a record that is sufficient to allow the court to determine whether the decision of the hearing officer was arbitrary and capricious. Provides that the court may award the municipality reasonable costs, including court costs and attorney's fees, if the court finds that the plaintiff's action for administrative review of a decision by the municipal code hearing officer is not reasonably well grounded in fact, is not warranted by existing law, or is not accompanied by a reasonable argument for the extension, modification, or reversal of existing law. Provides that the new provisions are mutually dependent and inseverable. Does not apply to the City of Chicago.

SENATE BILL 3096
REQUIRES ONGOING CALIBRATION OF SPEED CAMERA SYSTEMS AND RADAR EQUIPMENT

Amends the Illinois Vehicle Code, 625 ILCS 5/11-208.3, to provide that calibration of automated speed enforcement systems shall be conducted on an annual basis. Requires radar or lidar equipment to undergo an internal validation test every week, but removes the requirement that a qualified technician perform the test. Provides that radar equipment shall be checked with internal frequency generators

and internal circuit tests, but removes the diode display test requirement. Provides that the requirement that training on speed enforcement equipment be equivalent to the Speed Measuring Device Operator Program developed by the National Highway Traffic Safety Administration is optional. Provides that calibration test records shall be kept by the vendor or technician that performs the tests.

SENATE BILL 3294
REQUIRED LABELS ON RECYCLING BINS

Amends the Counties Code and the Illinois Municipal Code. Provides that a county or municipality may by ordinance require that all household goods recycling bins have a permanent, written, printed label affixed to the bin that is prominently displayed and includes the name, address, and contact information of the person or entity owning, operating, or maintaining that bin and whether the person or entity owning, operating, or maintaining the bin is a not for profit entity or a for profit entity. Amends the Consumer Fraud and Deceptive Business Practices Act to create new section 815 ILCS 505/2RRR. Provides that a person or entity owning, operating, or maintaining a household goods recycling bin shall have a permanent, written, printed label affixed to the bin that is prominently displayed and includes the name, address, and contact information of the person or entity owning, operating, or maintaining that bin and whether the person or entity owning, operating, or maintaining the bin is a not for profit entity or a for profit entity. Provides that a person or entity who violates those provisions commits an unlawful practice within the meaning of the Consumer Fraud and Deceptive Business Practices Act.

SENATE BILL 3447
GRANTS ILLINOIS DEPT OF REVENUE A FEE FOR MUNICIPAL USE TAX COLLECTION

Amends the Home Rule Municipal Use Tax Act in the Illinois Municipal Code, 65 ILCS 5/8-11-6. Provides that the State Treasurer shall retain 2% of amount to be paid to each municipality under those provisions (not including credit memoranda or refunds) to cover the costs incurred by the Department of Revenue in administering and enforcing those provisions. Provides that the 2% shall be transferred to the Tax Compliance and Administration Fund. Effective immediately.

SENATE BILL 3507
LIMITATION TO MUNICIPAL WATERWORKS/SEWERAGE CONNECTION CHARGE

Amends 65 ILCS 5/11-150-1. Prohibits the charge for connection to a waterworks system or sewerage system, or combined waterworks and sewerage system, to new users from exceeding 1/6 of the user's estimated annual charges for that class of service.

SIGNED BY THE GOVERNOR

HOUSE BILL 5657 – Public Act 98-0660
LIMITS LOCAL REGULATION OF FARMERS MARKETS

Amends the Food Handling Regulation Enforcement Act. Provides that regulation of farmers' markets by local authorities may be no more stringent than the regulation established by the Department of Public Health. Provides that a vendor who engages in food product sampling at a farmers' market may do so without obtaining a State or local permit to provide those food product samples, provided the vendor complies with the State and local permit requirements to sell the food product to be sampled and with the food preparation, food handling, food storage, and food sampling requirements specified in the administrative rules adopted by the Department to implement certain provisions of the Act.

HOUSE BILL 5688 - Public Act 098-0743
LAW ENFORCEMENT-ARMOR VESTS REQUIRED

Creates the Law Enforcement Officer Bulletproof Vest Act. Provides that each law enforcement agency within the State shall provide a bulletproof vest for every law enforcement officer of that agency who is employed as a new recruit by that agency on or after the effective date of the Act as part of the officer's initial equipment issue. Provides that each bulletproof vest shall be replaced before the expiration of the warranty period of the vest at the expense of the law enforcement agency. Provides that if substantial funding for the purchase of bulletproof vests is provided to law enforcement agencies by the federal government and State government, the law enforcement agency shall comply with the provisions of the Act. Provides that the Act does not apply to a law enforcement agency if any one of the following is applicable: (1)

substantial funding, as determined by the Illinois Law Enforcement Training Standards Board, is not provided to that agency by the federal and State government; (2) the law enforcement agency collectively bargains with its officers or exclusive representative of the officers for uniform allowances, and bulletproof vests are considered to be a part of the uniform for which the allowance is given; or (3) the law enforcement agency collectively bargains with its officers or exclusive representative of the officers for the provision of bulletproof vests. Provides that all officer bulletproof vests shall be replaced before or at the expiration of the warranty period of the vest at the expense of the law enforcement agency. Provides that a portion of the Traffic and Criminal Conviction Surcharge Fund may be used by the Illinois Law Enforcement Training Standards Board, subject to appropriation, to administer grants to local law enforcement agencies for the purpose of purchasing bulletproof vests under the Law Enforcement Officer Bulletproof Vest Act.

**HOUSE BILL 4418 – Public Act 98-0666
REFERENDUM REQUIREMENT TO DISBAND FIRE
DEPARTMENT**

Amends the Illinois Municipal Code, 65 ILCS 5/10-4-12, to prohibit a city or village that owns, operates, or maintains any fire department or departments from ceasing the operation and maintenance of that fire department or those fire departments unless the proposed cessation is first submitted to the voters by referendum. Further amends the Fire Protection District Act. Provides that where any city, village, or incorporated town is in fact owning, operating, and maintaining a fire department or fire departments located in whole or in part within or adjacent to the corporate limits of a fire protection district organized under this Act, such city, village, or incorporated town shall not cease operating and maintaining the fire department or fire departments unless such proposed cessation of services is first submitted by referendum to voters. Sets forth requirements and referendum language. Further provides that the rights of the employees of the dissolved fire department or departments provided by the Personnel Code, any applicable collective bargaining agreements, or under any pension, retirement, or annuity plan shall not be affected by this amendatory Act. Preempts home rule. Amends the State Mandates Act to require implementation

without reimbursement. Provides that a municipality with less than 500 residents is not subject to the referendum requirements of the amendatory Act.

**HOUSE BILL 5503 - Public Act 098-0738
REQUIRED WEBSITE POSTING OF AUDIT LETTER**

Amends Municipal Code to create new 65 ILCS 5/8-8-10.5 . Requires that within 60 days of the close of an audit under this Act, the auditor conducting the audit of all of the funds and accounts of a municipality shall do each of the following: (1) Provide a copy of any management letter and a copy of any audited financial statements to each member of the municipality's corporate authorities. **If the municipality maintains an Internet website, the corporate authorities shall post this information to its website.** (2) Present the information from the audit to the municipality's corporate authorities either in person or by a live phone or web connection during a public meeting. Effective Date: 1/1/2015.

**SENATE BILL 1812 - Public Act 98-0703
FINANCE - ALLOWS DEMAND DEPOSIT ACCOUNTS**

Amends the Public Funds Deposit Act, 30 ILCS 235/6.5. Provides that, in addition to other investments permitted by law, any treasurer or other custodian of public funds may deposit those funds into demand deposit accounts. Excludes those deposits from statutory requirements pertaining to the eligibility of a bank to receive or hold public deposits, and to the pledging of collateral by a bank to secure public deposits, if (i) the public agency initiates the investment at or through a bank located in Illinois and (ii) the invested public funds are at all times fully insured by an agency or instrumentality of the federal government. Effective immediately.

**SENATE BILL 3411 – Public Act 98-0650
TICKET QUOTAS PROHIBITED**

Amends Municipal Code to create new section 65 ILCS 5/11-1-12. Provides that a municipality may not require a police officer to issue a specific number of citations within a designated period of time. Provides that this prohibition shall not affect the conditions of any federal or State grants or funds awarded to the municipality and used to fund traffic enforcement programs. Further provides that a

municipality may not, for purposes of evaluating a police officer's job performance, compare the number of citations issued by the police officer to the number of citations issued by any other police officer who has similar job duties. Nothing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer's points of contact. Defines points of contact. Preempts home rule.

Vetoed by the Governor

HOUSE BILL 3796 – Governor Veto 6-27-14 VOLUMINOUS FOIA REQUESTS

Amends the Freedom of Information Act. Defines "voluminous request". Changes public body's notice requirements and increases deadlines in responding to a voluminous request. Provides that when a requester makes a voluminous request, the public body may charge specified fees for electronic data. Provides that, with specified exceptions, a public body is not required to copy and make available for public inspection a public record that is published on the public body's website.

CASE LAW UPDATE

By M. Neal Smith

Municipal Administrative Adjudications

In *Stone Street Partners, LLC v. City of Chicago Dept. of Admin. Hearings*, 2014 IL App (1st) 123654 (1st Dist. 2014), the First District Appellate Court held that the City of Chicago's imposition of a fine against a corporation was invalid because the City failed to follow its own procedures for serving notice of the violation.

The City had issued a \$1,050 ticket against a corporate entity for violations of the City's property maintenance code. Instead of serving the registered agent of the corporation or serving the corporation at its corporate business address, the city served the corporation at the property that had the property maintenance issues. A non-attorney appeared for the corporation and argued the case at the administrative adjudication level and lost. Thereafter, the decision of the administrative hearing officer was served, again, at the address of the property that had the property maintenance

issues and not to the registered agent or at the corporate business address. The uncollected fine became a lien on the property.

Eleven years down the road after the fine became a lien on the property, the corporation discovered the lien and filed a declaratory judgment action challenging the fine and the lien on the basis that the corporation never received proper notice of the administrative adjudication proceedings or of the existence of the lien. The appellate court held that the corporation did not, by appearing through a non-attorney, waive its right to challenge the fine because a corporation cannot appear through a non-attorney. The appellate court then noted that the city's administrative adjudication ordinance required service to be made at the address of the corporation's registered agent and that the City had failed to do so. The appellate court further noted that while the City had self-imposed the registered agent service requirement, the city was nevertheless obligated to comply with its own valid ordinances, making the case a good reminder to municipalities that proper service is critical to confer jurisdiction in administrative adjudication matters and that municipalities in most instances, cannot choose to ignore their own ordinances and do so at their own peril.

In another administrative adjudication related case, *Village of Lake in the Hills v. Niklaus*, 2014 IL App (2d) 130654 (1st Dist. 2014), the appellate court affirmed that home rule municipalities have the statutory authority to enforce judgments entered by administrative adjudication hearing officers.

In *Nicklaus*, a home rule village sought to collect fines imposed in local administrative adjudication court for ordinance violations. The circuit court denied the village's efforts to collect. The appellate court reversed, determining that the plain reading of Section 1-2.1-8 of the Municipal Code, 65 ILCS 5/1-2.1-8, allowing collections "in accordance with applicable law" demonstrates that the legislature clearly intended orders entered by municipal hearing officers pursuant to Division 2.1 of the Municipal Code to be enforceable by use of collection proceedings in the circuit courts, including by use of supplemental proceedings under Section 2-1402 of the Code of Civil Procedure. Section 2-1402 allows collection proceedings such as wage garnishments,

citations to discover assets and the compelling of certain assets to be used to satisfy judgments.

Tort Immunity

A recent pothole case will be useful for municipalities in arguing immunity under the Tort Immunity Act. In *Swain v. City of Chicago*, 2014 IL App (1st) 122769 (1st Dist. 2014), the appellate court held that the City of Chicago was not liable for plaintiff's injuries where plaintiff had injured himself as a result of stepping in a street pothole that was outside of a designated crosswalk.

In *Swain*, there was no dispute that the pothole in question was located approximately five inches outside of the crosswalk that was being used by the plaintiff at the time of the tripping incident. The

circuit court held and the appellate court affirmed that the city was entitled to judgment in its favor because the pothole was entirely outside of the crosswalk. Pursuant to Section 3-102 of the Tort Immunity Act, the city owes no duty to a plaintiff pedestrian who crosses a public street outside of the crosswalk.

Plaintiff argued that he was partially within the crosswalk when he stepped in the pothole and that, for this reason, the Tort Immunity Act was not applicable. The appellate court disagreed, stating that it is of no consequence that plaintiff was partially within the crosswalk at the time of the injury since there is no dispute that plaintiff stepped into a pothole that was entirely outside of the crosswalk.

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