

2021 Purchasing and Construction Virtual Conference

April 16, 2021

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PURCHASING & CONSTRUCTION VIRTUAL CONFERENCE APRIL 16, 2021

AGENDA

8:30 a.m. – 10:30 a.m.

GENERAL SESSION

- Top Ten Problems in Vendor Contracts (And How to Solve Them)
- Defending Your Tax Base: Best Practices for Navigating Revenue Disputes
- Bidding and Procurement and the Continued Movement Toward Cooperative Purchasing

10:30 a.m. – 10:45 a.m.

Break

10:45 a.m. – 12:30 p.m.

RESUME GENERAL SESSION

- When Is Your Board Bound to a Contract? A Primer on Contract Enforceability for Public Bodies
- Cyber Liability: Considerations and Risk Assessment
- Interactive Problem Solving for Purchasing and Construction (A Panel Discussion)

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Purchasing & Construction Virtual Conference

April 16, 2021

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Top Ten Problems in Vendor Contracts (And How to Solve Them)

Presented by Guy C. Hall and
Kenneth M. Florey



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No. 10

- Problem:
 - Out of state vendor; venue and governing law is the vendor's place of business
 - Vendor is not registered to do business in Illinois
- Solution:
 - Check contract to ensure venue and governing law is Illinois
 - Personal jurisdiction clause

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No. 9

- Problem:
 - Vendor on site performing work for the public body without a properly performed background check
- Solution:
 - The public body should:
 - Submit the applicant's identifying information to the State Police for a fingerprint-based criminal history records check;
 - Perform a check of the Statewide Sex Offender Database; and
 - Perform a check of the Statewide Murderer and Violent Offender Against Youth Database.

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No. 8



- Problem:
 - Indemnification clause unenforceable or badly worded
- Solution:
 - Make sure language is insurable
 - Separate clauses for commercial liability and professional liability

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No. 7

- Problem:
 - Vendor onsite without insurance and payment and performance bonds
 - Public body is not named as an additional insured on a primary and noncontributory basis
- Solution:
 - Obtain copy of insurance and payment and performance bonds from vendor at contract signing
 - Follow up if do not receive
 - Check insurance term to make sure not expired and will cover contract dates
 - Verify Certificate of Insurance for validity, endorsements, coverage and additional insured language
 - Verify bonds for validity

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No. 6



- Problem:
 - Problem with invoice received from vendor
 - Need to ensure compliance with Prompt Payment Act
- Solution:
 - Reject invoice in writing within 30 days of receipt and use your own Purchase Order
 - Reject portions of pay request in dispute & pay any portions that are not in dispute

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No. 5

- Problem:
 - Common traps in contracts that could lead to unintentional defaults
 - non-compete clauses, exclusivity provisions in other contracts, FOIA pre-notification clause
 - Vendor defaults
- Solution:
 - Check other contracts and carefully review contract language
 - Liquidated damages clause

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No. 4

- Problem:
 - Length of term and automatic termination (evergreen clause)
- Solution:
 - Make sure term and termination makes sense for contract
 - Address proration or payment of fees upon termination
 - Allow for termination for convenience upon 30 days' notice

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No. 3

- Problem:
 - Deciding whether to use boilerplate contracts and when to customize
 - Making sure you have the best contract to protect your interests
- Solution:
 - Analyze the risk
 - Amount of contract
 - Type of work being completed
 - Use the correct general conditions



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No. 2

- Problem:
 - Hidden vendor compensation
 - No hourly rates
 - Vendor drives charges
- Solution:
 - Make sure that scope of work and compensation is well defined
 - Require written preapproval prior to charges being incurred
 - Set not to exceed limits for payments

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No. 1

- Problem:
 - Limitation on liability
- Solution:
 - Remove from contract or narrow (insurance limits) and clearly define

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Questions?



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Defending Your
Tax Base: Best
Practices for
Navigating
Revenue Disputes

Presented by
Scott L. Ginsburg and
Katie Zumalt-Rogers



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Covid Impact on Property Taxes

- More Assessment Appeals
- Possible Delays & Distributions
- Possible Assessor Reassessments
- COVID / Catastrophic Event Adjustment



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COVID / Catastrophic Event Adjustment

- Reassessment in Disaster Areas – 35 ILCS 200/13-5
 - Area declared a major disaster area by President or Governor of IL
 - Upon application by property owner, reassess taxable property which was substantially damaged by the disaster
 - Value determined as of the date of declaration of the county as a major disaster area

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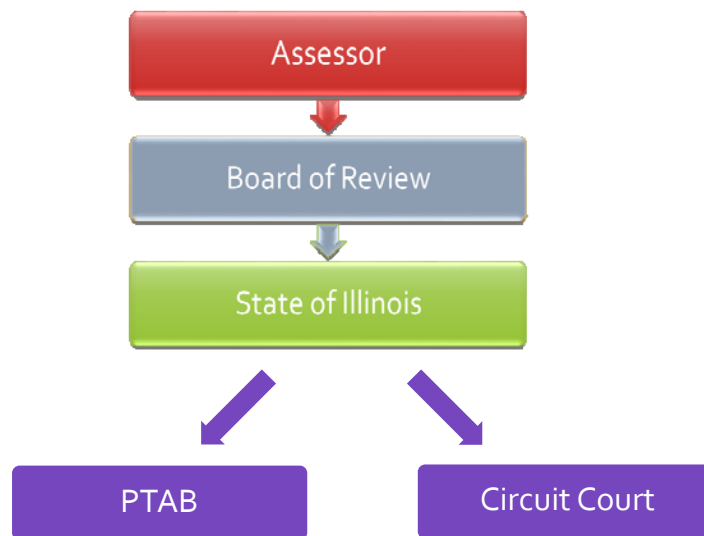
Real Estate Market During Covid-19

Anticipated Impact on Real Estate

- Residential – relatively the same
- Retail – downward trend / increase in vacancy
- Office – downward trend / change in use
- Industrial – upward trend

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Property Tax Assessment Appeals



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Defending a Property Tax Assessment Appeal

- Illinois Taxing Districts have the right to intervene and participate at the county Board of Review and the PTAB
- Board of Review Reductions
 - Reduced taxes are spread out amongst tax base.
 - EAV reductions do not result in taxing district refunds.
- PTAB and Circuit Court Reductions
 - All reductions result in refunds plus interest.

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Top Reasons for Board of Review Participation

Top Reasons for Board of Review Participation

- No refund
- Shorter timeframe means less litigation costs
- Opportunity for intergovernmental cooperation
- Opportunity to work with local property owners
- Local disputes decided locally
- Multi-year settlements
- Flexibility
- Get to the reasonable value



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Interfund Transfers

- Published Notice
 - At least 7 days prior to hearing but not more than 30 days prior to hearing
 - Newspaper of general circulation in the District
 - Setting forth time, date, place and subject matter of hearing
- Posted Notice
 - At least 48 hours prior to hearing
 - District office or building where hearing is to be held
 - Setting forth time, date, place and subject matter of hearing
- Public Hearing
- Resolution

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Interfund Transfers

- Permissible Transfers Under 17-2A
 - Educational to Operations and Maintenance (O&M)
 - Educational to Transportation
 - O&M to Educational
 - O&M to Transportation
 - Transportation to Educational
 - Transportation to O&M
 - Tort to O&M
- Sunset – After June 30, 2021 transfer must be to meet one-time, non-recurring expense.



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Transfers to Capital Projects Fund?

ISBE Rule 100.10

- Transfers to Capital Projects Fund:
 - “When revenues or other sources of funds are pledge to pay for a capital project or acquisition, the moneys shall be transferred into the Capital Projects Fund.
 - “All other inter-fund transfers shall be accomplished in accordance with the applicable provision of Section 17-2A of the School Code.”
- ISBE Audit Form Account Number 8840 – “Fund balance transfer to pay for Capital Projects.”
- Statutory authority for ISBE Rule 100.10 is unclear
- ***Safe approach is to transfer to O&M under 17-2A***

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Common fund-related objections to Taxing District levies:

Excessive Accumulations

- Excessive accumulation objections
 - Typically assert that the challenged levy resulted in an excess accumulation of assets in the levied-for fund because, at the time the levy was made, the fund’s available assets exceeded two times its average annual expenditure.
 - Excess accumulation claims are analyzed according to the guidelines set out in *Central Illinois Public Service Co. v. Miller*, 42 Ill.2d 542, 248 N.E.2d 89 (1969) (“CIPS v. Miller”).
 - If available assets of that magnitude are shown, the taxing body can defeat the objection by presenting credible evidence as to why it needed to make an additional levy.

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Common fund-related objections to Taxing District levies:

Improper Expenditures of "Tort" funds

- Allege that taxing district financial records show that it made "improper expenditures" from proceeds of levies for tort/liability insurance purposes, and that the tort levy should be reduced by the amount by which the fund would be replenished if reimbursed for the alleged wrongful "diversions of assets".
- To support plaintiffs' allegations, the text of these objections often cite budget line items for unemployment compensation and workers compensation.



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Lawful Use of Tort Fund Revenue and Risk Management Programs

- Section 9-107(b) of the Tort Immunity Act – Pursuant to, monies in the Liability, Protection, and Settlement Fund may be used to pay:
 - "the cost of insurance, individual or joint self-insurance (including reserves thereon), including all operating and administrative costs and expenses directly associated therewith, claims services and risk management directly attributable to loss prevention and loss reduction, legal services directly attributable to the insurance, self-insurance, or joint self-insurance program, and educational, inspectional, and supervisory services directly relating to loss prevention and loss reduction ... including all costs and reserves directly attributable to being a member of an insurance pool ...";
 - principal and interest on bonds issued to create insurance reserve or self-insure;
 - judgments and settlements arising from tort liability; and
 - "the cost of risk management programs."

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Common fund-related objections to Taxing District levies:

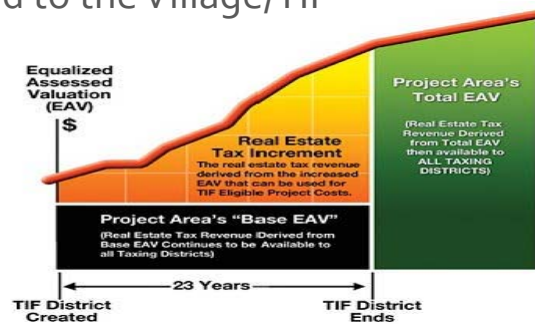
Loss in Collection

- Allege that County Clerk improperly added % for anticipated loss in collection when historical collection rate did not justify the additional tax.
- Taxing Districts should evaluate potential collection loss in light of current events.

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Illinois Tax Increment Financing ("TIF") Overview

- 23 Years
- EAV for Taxing District taxes freezes.
- Additional revenue, "incremental value," is funneled to the Village/TIF



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The Basics

- Purpose
 - The purpose of a tax increment financing (TIF) district is to generate funds so that a municipality may expend funds to redevelop a "depressed" area.
 - Real estate tax revenues generated within the TIF district are diverted from other taxing bodies, such as schools, to pay for the cost of the redevelopment.

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Challenges

- Failure to meet the technical requirements of the statute regarding notice, hearing, and adoption of the TIF.
- Insubstantial findings by the municipality of the existence of a blighted, conservation, or industrial park area.
- Private development of the area has occurred or will occur without the TIF designation.
- All of the property in the TIF is not substantially benefitted by the plan.
- Political ramifications of being labeled as anti-development.

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Questions?



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Bidding and
Procurement and
the Continued
Movement Toward
Cooperative
Purchasing

Presented by Ken Florey
and Howard Metz



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The Duty to Publicly Bid



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The Duty to Publicly Bid

- In Illinois, public bodies are generally required to use a public bidding process when purchasing supplies, materials, services and work over a specified dollar amount.
- Each public body is governed by its own statute, which dictates the threshold amount over which contracts must be bid.

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The Duty to Publicly Bid

- Those statutes also contain numerous exceptions to the public bidding requirement.
- The statutes also dictate the procedure for the bid process, such as the notice requirements for publication and the time period between the bid notice and the bid opening.

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The Duty to Publicly Bid

ILLINOIS PUBLIC ENTITY	STATUTE	PUBLIC BIDDING THRESHOLD	EXCEPTION TO PUBLIC BIDDING REQUIREMENT
School Districts	105 ILCS 5/10-20.21	\$25,000 (unless lower amount required by board policy) Construction not to exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility	<ul style="list-style-type: none"> • Services of individuals possessing a high degree of professional skill • Printing of finance committee reports and departmental reports • Printing or engraving bonds, tax warrants, etc. • Perishable foods and beverages • Maintenance or servicing of equipment by the manufacturer or its authorized agent • Information Technology • Duplicating machines or supplies • Natural gas • Equipment previously owned by another entity • Construction not to exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility • Goods and services from another governmental agency • Goods and services procurable from only one source (e.g., magazines, periodicals, etc.) • Emergency expenditure with approval of 3/4 board members • State master contracts • Transportation contracts must be bid but factors other than price can be used to determine award

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The Duty to Publicly Bid

Community College Districts	110 ILCS 805/3-27.1	\$25,000 (unless lower amount required by board policy) Construction not to exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility	<ul style="list-style-type: none"> • Services of individuals possessing a high degree of professional skill • Printing of finance committee reports and departmental reports • Printing or engraving bonds, tax warrants, etc. • Perishable foods and beverages • Maintenance or servicing of equipment by the manufacturer or its authorized agent • Information technology • Duplicating machines or supplies • Natural gas • Equipment previously owned by another entity • Construction not to exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility • Goods and services from another governmental agency • Goods and services procurable from only one source • Emergency expenditure with approval of 3/4 of board members
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The Duty to Publicly Bid

Park Districts	70 ILCS 1205/8-1(c)	\$25,000	<ul style="list-style-type: none"> • Services of individuals possessing a high degree of professional skill • Printing of finance committee reports and departmental reports • Printing or engraving bonds, tax warrants, etc. • Utility services • Information Technology • Duplicating machines or supplies • Goods and services from another governmental agency • Equipment previously owned by another entity • Magazines, books, periodicals, pamphlets, and reports • Emergency expenditure with approval of 3/4 board members
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The Duty to Publicly Bid

Library Districts	75 ILCS 5/5-5	\$25,000	<ul style="list-style-type: none"> • Services of individuals possessing a high degree of professional skill • Printing of finance committee reports and departmental reports • Printing or engraving bonds, tax warrants, etc. • Maintenance or servicing of equipment by the manufacturer or its authorized agent • Information technology • Duplicating machines or supplies • Utility Services • Goods and services from another governmental agency • Equipment previously owned by another entity • Goods and services procurable from only one source (e.g., magazines) • Emergency expenditure with approval of 3/4 board members
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The Duty to Publicly Bid

Municipalities (less than 500,000 inhabitants)	65 ILCS 5/8-9	<p>\$20,000 (public improvements and their maintenance)</p> <p>Not obligated by statute to bid service contracts or contracts for materials; however, many municipalities have adopted ordinances requiring competitive bidding</p>	<ul style="list-style-type: none"> • Authorization by a vote of 2/3 of its aldermen or trustees • Contracts with the federal government
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Governmental Cooperative Purchasing

A word about Joint Purchasing

- Authority to do pursuant to IL Constitution – Intergovernmental Cooperation Act (5 ILCS 220/1) and Joint Purchasing Act (30 ILCS 525/1).



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Governmental Cooperative Purchasing

What are the legal requirements to engage in cooperative purchasing?

- The cooperative must be run by a **government body**.
- The participating district must join the cooperative by a **board approved agreement**.
- Bids and proposals must be based on **competitive solicitations**.
- Bids and proposals must be solicited by **public notice** as specified by the Joint Purchasing Act.

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Governmental Cooperative Purchasing

What selection criteria can a cooperative use?

- All purchases, orders or contracts shall be awarded to the lowest responsible bidder or **highest-ranked proposer**, taking into consideration:
 - The **qualities** of the articles or services supplied;
 - Their **conformity** with the specifications;
 - Their **suitability** to the requirements of the participating governmental units; and
 - The **delivery** terms.

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Governmental Cooperative Purchasing

Who does a district contract with for any cooperative purchases?

- The contract will be between the selected provider and the local governmental body.
- The cooperative is not a party to the contract.



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Governmental Cooperative Purchasing

Can you negotiate the terms of the contract?

- Check the cooperative rules and policies to determine if contract negotiation is allowed.
 - This is critical where compliance with other Illinois specific laws are involved, such as the Prevailing Wage Act and the Public Construction Bond Act.

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Governmental Cooperative Purchasing

- Strategies for Success with Joint Purchasing options:
 - Get informal quotes or estimates from local vendors/contractors first. It may be cheaper to use the traditional bidding method.
 - Look at the offerings of all of the cooperatives before deciding to “qualify” one particular cooperative.
 - Have legal counsel provide an opinion on whether participation in a particular cooperative will meet the requirements of Illinois law.
 - Examine the terms for participation; is there an entry fee? Is there a participation fee? Are there other costs of participation?

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Governmental Cooperative Purchasing



- Strategies for Success with Joint Purchasing options – cont.
 - Examine the master agreement (or have your counsel examine it). Identify any unacceptable business or legal terms and conditions.
 - Confirm in advance that you will be able to amend terms and conditions to meet your business expectations, and to comply with Illinois law.
 - Investigate the actual vendor, contractor, or service provider.

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Local Government Professional Services Selection Act - 50 ILCS 510/0.01

- RFP/RFQ process required for the selection of Architects, Engineers & Land Surveyors
- RFP can be solicited by either publication, posting on your website, or sending notice to firms who have a current statement of qualifications with the public body

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Local
Government
Professional
Services
Selection Act
- 50 ILCS
510/0.01

- RFP not required if the public body has a previous satisfactory relationship with the firm
- RFP not required for contracts less than \$40,000 or in emergency situations.

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The Bidding
Process



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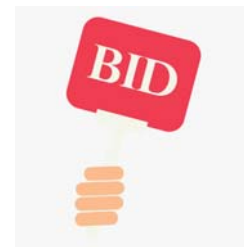
Bid Submittals

- Bid Specifications
 - Certainty Required
 - Sole Sourcing
 - Bid Addendum & Questions
 - Pre-Bid Meeting

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Bid Submittals

- Sealed Bids
- Electronic Bids
- Timeliness of Bids
- Modification, Withdrawal or Re-submittal of Bids Before Bid Opening



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Bid Submittals

- Public Opening and Reading of the Bids
- Withdrawal or Modification after the Bids Are Received

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Awarding the Bid – Criteria

- Lowest
 - Alternate Bids
- Responsive
 - Material Defects – Nonwaivable
 - Minor Variances – Waivable
- Responsible
 - Pre-qualification of Bidders
- Post-Bid Pre-Award Negotiations



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Rejecting the Bid

- Discretion “to reject any and all bids.”
- Documenting the Basis for Awarding/Rejecting Bid

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Questions?



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Intermission

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When Is Your Board Bound to a Contract? A Primer on Contract Enforceability for Public Bodies

Presented by
Steven B. Adams and
Nicole Karas



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Introduction

AGENDA

- Key Contract Principles
 - Contract Formation
 - Defenses to Contract Formation
 - Equitable Remedies/Alternative Theories of Recovery
- Practical Tips

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Key Contract Principles: Contract Formation

- Public bodies are typically bound by general contract law.
- Power to contract generally limited to the corporate authorities, but...
- In some instances, corporate authorities have the power to delegate contracting authority.
- Special defenses available to public bodies in certain situations.

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Key Contract Principles: Contract Formation

Is There A Contract In The First Place?

- Mutual Assent – offer and acceptance.
- Agree to same bargain at same time.
- Consideration.
- Definite and certain terms including subject matter.
- Lawful Subject matter.



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Key Contract Principles: Defenses to Contract Formation

- Defenses to Creation of the Contract?
 - Mutual/unilateral mistake
 - Latent ambiguity/mutual misunderstanding
 - Fraud and misrepresentation
 - Illegality of contract
 - Duress
 - Statute of frauds
 - Unconscionability

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Key Contract Principles: Defenses to Contract Formation

Defenses to Creation of the Contract for Public Bodies

- Public body must have “legal authority” to contract.
- Simple statement, loaded with ambiguity. What legal authority missing?
 - Contracts where person contracting on behalf of public body lacks authority to contract. Duty on the contractor to know what authority the representative has.
 - Contracts that don’t comply with specific contract formalities or procedural requirements.
 - Contracts where public body had no statutory authority to contract regarding the subject matter.
 - Contracts where action was without authority but violated no statute.
 - Contracts violating laws addressing a specific type of wrong related to the transaction—e.g., contract entered without bidding when bidding required; contract awarded to a board member’s relative in violation of conflict-of-interest law.

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Key Contract Principles: Void Contract

- Examples where no legal authority  
- Contract is void if statute requires board approval and board did not approve.
 - Contract to restore building damaged by fire never approved by school board as required by statute and, as a result, the contract is void. *Restore Construction Company, Inc. vs. Board of Ed. of Proviso Township High Schools District 209*, 2019 IL App. (1st) 181580, 133 N.E.3d 71 (1st Dist. 2019).
 - Contract is void even though the Park District received some benefit; employee without authority to bind Park District without board’s prior approval. *D.C. Consulting Engineers vs. Batavia PD*, 143 Ill.App.3d 60 (2nd Dist. 1986).

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Key Contract Principles: Void Contract

- Examples where no legal authority:
 - Settlement agreement cannot be enforced if not approved by board when board approval is required by statute. *Meade vs. City of Rockford*, 396 Ill.Dec. 488,492-94 (2nd Dist. 2015) (Committee approved but not full board as required by statute).
 - Contract violates statute or constitution.
 - Lease of property to ski resort's exclusive use was for private purpose and therefore unconstitutional and void.

Wilmot Mountain, Inc. vs. Lake County Forest Preserve District, 859 F.Supp. 2d 932, 937 (N.D. East. Div. Ill 2012).

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Key Contract Principles: Void Contract

- Examples where no legal authority:
 - No contract and no expense incurred by a municipality even if the object of the expenditure has been ordered by the corporate authorities, unless an appropriation has been previously made.
- A void contract is unenforceable
 - And contractor is not entitled to contract damages.



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Key Contract Principles: Consequences of Void Contract

- Public body can be enjoined from entering into a void contract. *City of Chicago v. Mohr*, 216 Ill. 320 (1905); *Westbrook v. Middlecoff*, 99 Ill.App. 327 (3d Dist. 1901).
- Public body can be enjoined from performing a void contract, once entered into. *Howell v. City of Peoria*, 90 Ill. 104 (1878).
- “Municipal contracts are each different, and the legal effect of each one depends upon its language and the parties conduct in light of that language.” *Patrick Engineering v. City of Naperville*, 364 Ill.Dec. 40 (2012).

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Key Contract Principles: Consequences of Void Contract

- Payments made to contractor by public body, no benefit received, then contract declared void
 - Can public body recover the payments it made?
 - No Illinois cases-other jurisdictions divided.
- Benefit received by public body, no payment to contractor, then contract declared void
 - Is retention of the property/money a taking?
 - If not, would return of property undermine statutory purpose– allow corrupt officials and contractors to lose nothing if caught?
 - No Illinois cases- other jurisdictions divided.

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Key Contract Principles: Remedies Generally

- Contract Remedies vs. Equitable Remedies
 - Contract Damages: Restitution, compensatory, stipulated damages.
 - Equitable Damages: Value of the services.



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Key Contract Principles: Quantum Meruit

- Quantum Meruit:
 - Even if contract is void, contractor may be entitled to recover actual, reasonable value of services rendered.
 - Contractor must show:
 - Performed a service for the benefit of the public body;
 - Contractor did not perform gratuitously;
 - Public agency accepted the service;
 - No contract existed.

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Key Contract Principles: Quantum Meruit

- Contractor not precluded from value of services performed even though contract was void. *Restore Construction Company, Inc. vs. Board of Ed. of Proviso Township High Schools District 209*, 2019 IL App. (1st) 181580, 133 N.E.3d 71, 78 (1st Dist. 2019).



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Key Contract Principles: Quantum Meruit

- Failure of the public body to comply with required methods for awarding contracts will not preclude a contractor from recovering under a quantum meruit claim.
 - Contractor must show it provided goods or services of value;
 - Public body received benefit from good or service; and
 - Would be unjust for the public body to retain without reasonable payment.

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Key Contract Principles: Quantum Meruit

- Lack of competitive bidding and formal, recorded vote of board did not preclude contractors' claims of quantum meruit. *Restore Construction Company, Inc. vs. Board of Ed. of Proviso Township High Schools District 209*, 2020 IL 125133 (April 16, 2020) (Unpublished Opinion).

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Key Contract Principles: Unjust Enrichment

- Unjust enrichment
- Remedy available when unenforceable contract exists, but one party has performed, and the other party receives the benefit.
- Cannot receive a benefit for free.
 - Contractor ski resort denied full recovery due to unconstitutional lease, still able to recover for the value of the services it provided for performing work for forest preserve. *Wilmot Mountain, Inc. vs. Lake County Forest Preserve District*, 859 F.Supp.2d 932, 939 (N.D. East. Div. Ill 2012).



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Key Contract Principles: Equitable Estoppel

- Even though contract is void, contractor may succeed in claim of equitable estoppel:
 - Equitable Estoppel:
 - Not right or just for the public body to assert that no contract exists.
 - Only applies to public bodies in limited, extraordinary circumstances. *Patrick Engineering, Inc. vs. City of Naperville*, 364 Ill.Dec. 40, 52 (2012).

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Key Contract Principles: Equitable Estoppel

- Contractor seeking recovery on Equitable Estoppel grounds must show:
 - An affirmative act by either the public body itself or an act of an official with express authority to bind the public body.
 - Contractor must have relied on that act—reliance must be detrimental and reasonable.
 - Contractor must have substantially changed its position based on the affirmative act of the public body or its officials.
 - Reliance and position change must be justified based on contractor's inquiry into the public body/its officials' authority.

Patrick Engineering, Inc. vs. City of Naperville, 364 Ill.Dec. 40, 53 (2012).

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Key Contract Principles: Equitable Estoppel

- **Duty on contractor to know if the public employee or public body has ACTUAL AUTHORITY (to bind the public body):**
 - Contractor cannot assume just by title.
 - Cannot assume authority just because there is a designated representative in contract.
 - Engineer not entitled to equitable estoppel by relying on argument that city employees “appeared” to be “designated” by the corporate authorities to approve additional scope of work.

Patrick Engineering, Inc. vs. City of Naperville, 364 Ill.Dec. 40, 55 (2012)



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Practical Tips

- Develop purchasing policies and educate staff. Include provisions expressly delegating contracting authority where appropriate.
- Be aware of specific laws that require a specific approval process.
- Be aware of that actions the public body can be binding:
 - If a bid situation, upon award of bid = acceptance by public body.
 - Execution of the agreement is merely a formality. *David Copperfield's Disappearing, Inc. v. Haddon Advertising Agency*, 897 F.2d 288 (7th Cir. 1990).

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Practical Tips

- Contract terms:
 - Beware of boilerplate representations of authority to enter into contract.
 - State the process and authority for request and approval of changes.
 - If an agent/employee will have the authority to bind the public body:
 - Remember, corporate authorities must first make an express delegation and in accordance with applicable law.
 - Expressly designate this in the contract.



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Practical Tips

Document!

- All aspects of the transaction:
 - Action taken by public body to approve or delegate approval;
 - Written agreements;
 - Changes;
 - Problems; and
 - All related communications.

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Questions?



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Cyber Liability:
Considerations
and Risk
Assessment

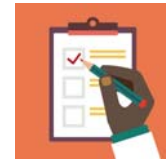
Presented by Samuel B.
Cavnar and Christopher R.
Gorman



Robbins Schwartz

Today's Agenda

- Recent trends
- Cyber liability insurance coverage considerations and recommendations
- Risk management for contracts and purchasing
- Q&A



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Growing Risk and Escalating Costs

- Ransomware cost government organizations across America \$18.88 billion in recovery costs and downtime in 2020 (Comparitech, March 17, 2021)
- 1,300 data breaches at U.S. school districts and colleges since 2005 (Comparitech, March 17, 2021)
- Since 2017, cyberattacks on state and local governments rose an average of 50% (BlueVoyant, August 27, 2020)

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Growing Risk and Escalating Costs

- 1,300 data breaches at school districts and colleges since 2005 (Comparitech, March 17, 2021)
- Since 2017, cyberattacks on state and local governments rose an average of 50% (BlueVoyant, August 27, 2020)
- Ransomware cost government organizations across America \$18.88 billion in recovery costs and downtime in 2020 (Comparitech, March 17, 2021)

Robbins Schwartz

Growing Risk and Escalating Costs

- Pandemic brings growth of public-sector organizations moving to cloud computing and increased phishing risk (72% increase in attacks)
- Average Ryuk ransomware payment increases from \$1.3 million in Q1 2020 to \$7.4 million in Q4 2020
- State actors play an increasing role in cyberattacks
 - 30,000 organizations' data stolen through enterprise email hack
 - State and local governments specifically targeted

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Cyber Liability Insurance in Focus

- Given growing threats and escalating costs, substantial impact on insurance market
- Carriers withdrawing from the market, including market segments (public sector)
- Carriers focused on ensuring exclusions in place

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Cyber Liability Insurance in Focus



- Greater scrutiny of prior claims history
- Mandating minimum standards for cybersecurity practices
 - Requiring offsite storage of backups
 - Increasing use of multi-factor authentication
- Focusing on risks posed by third-party data access and management

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Recommended Coverage Limits and Best Practices

- Require vendors to maintain Cyber Liability coverage
- Existing coverages may not be adequate
- Coverage should include (at a minimum):
 - \$1 million per occurrence/\$2 million aggregate
 - Limits should be increased by on nature of service and data being stored Technology E&O for IT firms
- COIs, policy endorsement and additional insured status
- Legal review

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Risk Management for Contracts and Purchasing

- Designate at least one employee to oversee your district's cybersecurity risk management
 - Could be Director of Technology, Records Custodian, or someone else
 - Depending on the size of your organization, consider designating more than one employee to oversee compliance



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Risk Management for Contracts and Purchasing

- Conduct an inventory of all vendors currently receiving covered information.
 - Understand the scope and types of data being shared
 - Review provisions governing security and breach
 - Compare insurance requirements to recommended coverage limits

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Risk Management for Contracts and Purchasing

- Where there is no existing written agreement in place between the client and vendor, consider entering into one



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Risk
Management
for Contracts
and
Purchasing

- Review and assess your organization's own current cyber liability coverage

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Risk
Management
for Contracts
and
Purchasing

- Communicate with vendors regarding the scope of their cyber liability coverage

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Questions?



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Interactive
Problem Solving
for Purchasing
and
Construction
(A Panel Discussion)

Submit Your Questions in
the Chat Box or Q&A!



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Scott focuses his practice in the area of real property taxation and assessment appeals, where he has tried several cases before the State of Illinois Property Tax Appeal Board, and he litigates cases in the circuit court on valuation and tax rate objections.

Scott also practices in the area of commercial transactions and local government, including contract drafting and review, litigation and alternative dispute resolution. He has experience in representing general contractors, local governments and business owners in all aspects of civil litigation.

Prior to joining Robbins Schwartz, Scott concentrated his practice on litigation, in the areas of commercial disputes, construction defects and labor and employment issues. Scott is also a former judicial extern to the Honorable Michael J. Reagan, United States District Judge, Southern District of Illinois.

RECENT PUBLICATIONS

Author, "*PTAB Clarifies Uniformity Standards for Income Properties*," Illinois State Bar Association's *Tax Trends* (2015)

Author, "*Chicago Bears Football Club v. The Cook County Department of Revenue*, 2014 IL App (1st) 122892," *Tax Trends*, Illinois State Bar Association (2014)

Contributing author, "Illinois Supreme Court Clarifies Standard Review for Zoning Decisions," *Illinois Municipal Review* (2008)

RECENT PRESENTATIONS

Property Tax Assessment Challenges and How to Defend Your Tax Base, PMA Financial Network, LLC (June 2020)



PRACTICE AREAS

Commercial Law
Construction Law
Education Law
Energy Law
Litigation
Municipal Law
Public Finance & Taxation
Real Estate Development
Zoning, Planning & Land Use

EDUCATION

J.D., Washington
University School of Law

B.A., DePauw University

ADMITTED TO PRACTICE

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

ORGANIZATIONS

Illinois State Bar
Association, State and
Local Taxation Section
Council, Member

Robbins Schwartz

KENNETH M. FLOREY

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Ken Florey concentrates his practice representing public and private clients, including municipalities, school districts, community colleges, townships, libraries, private owners, contractors and design professionals regarding land use, municipal law, construction, tax, finance and litigation. Ken has also started offering his services as a mediator with an emphasis on construction disputes.

Ken was the Chair of the DuPage County Bar Association's Local Government Committee. He was appointed Special Assistant Attorney General to prosecute and defend construction litigation claims on behalf of the Illinois Capital Development Board. Ken is also a member of the Illinois ASBO Service Associate Advisory Committee. He served as a Trustee for the Village of Lombard for eight years and is a member of the Lombard Fire and Police Commission.

MEDIATOR CERTIFICATE: NORTHWESTERN UNIVERSITY 2017

AWARDS

Illinois Leading Lawyer, Construction Law; Governmental, Municipal, Lobbying & Administrative Law; Land Use, Zoning & Condemnation Law; and School Law

Illinois Association of School Business Officials, Above and Beyond Award

Illinois Institute for Local Government Law, Litigation Award

RECENT PUBLICATIONS

Contributing author, "Joint Purchasing Everything You Want to Know but Are Afraid to Ask!" *UPDATE Magazine*, Illinois ASBO (2019)

Contributing author, "How Far Does the Law Allow Schools to Go?" *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, "Top 11 Public Bidding Questions & Solutions" *UPDATE Magazine*, Illinois ASBO (2018)

Co-author, "School Construction from Start to Finish: A Project Checklist," *School Business Affairs Magazine*, ASBO (2018)

Contributing author, "Top 11 Public Bidding Questions," *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, "Meditation a Win-Win for Clients and their Attorneys in Construction Litigation," *Chicago Daily Law Bulletin* (2018)



PRACTICE AREAS

Commercial Law
Construction Law
Education Law
Energy Law
Litigation
Mediation
Municipal Law
Public Finance & Taxation
Real Estate Development
Zoning, Planning & Land Use

EDUCATION

J.D., DePaul University
College of Law; Managing
Editor, *DePaul Journal of
Art and Entertainment
Law*

B.A., University of Illinois
at Urbana-Champaign

ADMITTED TO PRACTICE

U.S. District Court for the
Northern District of
Illinois

Supreme Court of Illinois

Contributing author, "Organization, Finance, and Property," Illinois School Law, IICLE (2017)

"Construction Project and Contract Pitfalls" *Update Magazine*, Illinois ASBO (2017)

"The Good, the Bad and the Ugly of School Bidding Requirements," *UPDATE Magazine*, Illinois ASBO (2016)

"Settlement Crumbles; Appeals Court Declines to Put Pieces Back Together," *Chicago Daily Law Bulletin* (2015)

"On Public Display: Advertising in Schools," *UPDATE Magazine*, Illinois ASBO (2015)

RECENT PRESENTATIONS

Foolproof Contract that Abide by State Laws, 2019 Illinois ASBO Annual Conference (May 2019)

Construction Contracts: Boilerplate Language Landmines You May Not Know, NBI (February 2019)

Legal, Legislative and Ethics Update, ICCTA (November 2018)

Purchasing Processes, Problems & Solutions, Illinois ASBO (September 2018)

Navigating Property Tax Assessment Complaints and the PTAB, Illinois ASBO & IASPA (October 2018)

Construction Disputes: Bring Home a Win for Your School District, ASBO International (October 2018)

Construction Project Problems or Solutions After Construction is Done, Illinois ASBO (October 2018)

Construction and Purchasing Disputes and Resolutions, ASBO International Conference (September 2018)

Construction, Bidding and Purchasing in Township Government, Township Officials of Illinois Online Seminar (August 2018)

Administrators Legal Session II, Concordia University (August 2018)

Construction Disputes and Resolutions, Illinois ASBO Conference (May 2018)

Top Solutions and Problems for Bidding and Construction, Illinois ASBO Annual Conference (May 2018)

Lead Testing Update: Everything You Need to Know, Illinois ASBO Conference, (May 2018)

Robbins Schwartz

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PARTNER, CHAMPAIGN

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Guy Hall provides legal representation to a number of businesses, including electric cooperatives and health care institutions, on a range of matters including governance, policy development, contracts, real estate transactions, mergers, acquisitions, divestments and employment issues. He also advises local governmental entities, including park districts, in the areas of compliance, real estate transactions, taxation and creditor's rights.

Guy is a member and past Chair of the Illinois State Bar Association's Health Care Section Council and has counseled health care entities regarding Medicare and Medicaid, ERISA reimbursement disputes, health care services liens and compliance with the requirements of the Illinois Department of Insurance. Guy has been involved in the formation and conversion of health insurers. He has guided physicians through the development of policies and procedures as well as operational matters involving purchasing and leasing equipment, borrowing and security agreements. He has also advised on privacy matters, including medical records and HIPAA.

Guy has provided counsel regarding election and political party designations, candidate qualification requirements, environmental issues and demolition suits, as well as ordinance drafting and enforcement. He has also provided guidance regarding the Open Meetings Act, FOIA, ADA and other federal and state laws.

AWARDS

"AV" Rated by Martindale-Hubbell

RECENT PUBLICATIONS

"Could Your Township Benefit From the Work of a Committee?" *Township Perspective*, Township Officials of Illinois (2013)



PRACTICE AREAS

Commercial Law
Energy Law
Health Care Law
Municipal Law
Public Finance & Taxation
Real Estate Development

EDUCATION

J.D., University of Tulsa
College of Law

B.A., University of Illinois

ADMITTED TO PRACTICE

U.S. District Court for the
Central District of Illinois

Supreme Court of Illinois

ORGANIZATIONS

Champaign County Bar
Association

Champaign Rotary Club

Electric Cooperative Bar
Association

Illinois Association of Park
Districts

Illinois State Bar
Association, Health Care
Section Council

Illinois State Bar
Association, Energy,
Utilities,
Telecommunications &
Transportation Section
Council

The Carle Foundation,
Board of Trustees

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HOWARD A. METZ

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Howard Metz counsels and represents school districts, community colleges, park districts and municipalities with respect to real estate, commercial transactions, construction law and land use and zoning matters. He has resolved construction cases involving issues such as disputed architectural fees, construction defects, bidding disputes and construction delays. Howard has also litigated issues involving zoning laws and municipal control over school property.



RECENT PUBLICATIONS

Contributing author, "Joint Purchasing Everything You Want to Know but Are Afraid to Ask!" *UPDATE Magazine*, Illinois ASBO (2019)

Contributing author, "Public Body Social Media Rules Make Retention, Ready Retrieval Imperative," *Chicago Daily Law Bulletin* (2019)

Contributing author, "How Far Does the Law Allow Schools to Go?" *UPDATE Magazine*, Illinois ASBO (2018)

Co-author, "School Construction from Start to Finish: A Project Checklist," *School Business Affairs Magazine*, ASBO (2018)

Contributing author, "Organization, Finance, and Property," *Illinois School Law*, IICLE (2017)

"Look Before You Leap: Evaluating Your Joint Purchasing Options," *UPDATE Magazine*, Illinois ASBO (2016)

Contributing author, "School Property and Environmental Issues," *Illinois School Law*, IICLE (2010 and 2012)

RECENT PRESENTATIONS

Foolproof Contract that Abide by State Laws, 2019 Illinois ASBO Annual Conference (May 2019)

Construction Contracts: Boilerplate Language Landmines You May Not Know, NBI (February 2019)

PRACTICE AREAS

Commercial Transactions
Construction Law
Education Law
Finance
Municipal Law
Real Estate Development

EDUCATION

J.D., IIT Chicago-Kent
College of Law

B.S., University of Iowa

ADMITTED TO PRACTICE

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

Robbins Schwartz

STEVEN B. ADAMS

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Steve represents government and commercial clients in a wide range of legal matters. Since beginning his practice in 1985, he has provided comprehensive general counsel services for over 30 Chicago-area park districts, municipalities, school districts and other units of local government primarily in northeastern Illinois.

Steve has vast experience handling all aspects of corporate representation of park district and other local governmental units, including Open Meetings Act/FOIA compliance, public finance and taxation, labor and employment, contracts and regulatory and administrative law matters, election law, civil rights issues, intergovernmental cooperation and conflict including regional intergovernmental agreements, foundations, not-for-profits and 501(c)(3) organizations, complex capital and real estate projects, and litigation. Steve has tried cases and actively litigated in state and federal courts on civil rights, election law, land use, construction law and state regulatory issues

PROFESSIONAL BACKGROUND

Steve is a faculty member at the Illinois Institute of Continuing Legal Education Local Government Law Institute, a member of the Lambda Alpha Land Economics Society, a member of the Board of Directors of the Naperville Heritage Society, former member of the Board of Directors of the Naperville Chamber of Commerce, and former chairman of the Chamber's Legislative Committee. Steve has served as a Police and Fire Commissioner for the City of Naperville, and as an Executive Committee member of the Illinois Police and Fire Commissioner's Association.

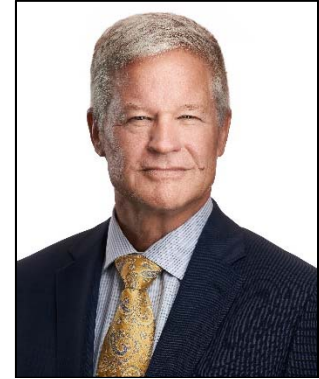
RECENT PUBLICATIONS

Steve is co-author of the "Park District Guide to Illinois Sunshine Laws," published in 2017 by the Illinois Association of Park Districts, and co-author of the Illinois Institute for Continuing Legal Education's treatise on Park District Law, published in 2011.

He has had several articles pertaining to Illinois park district law published. Examples of his recent publications include:

- "SCOTUS Draws Line on COVID-19 Restrictions and Houses of Worship" Chicago Daily Law Bulletin Vol 167, No. 3 (January 7, 2021);
- "Public Officials Social Media Accounts Newest Legal Tussle" published in the Chicago Daily Law Bulletin Vol. 165, No. 78 (April 22, 2019);

"Playing Nice in the Sandbox: Tips to Reduce Board Conflict and Improve Board Outcomes" in the Illinois Park and Recreation Magazine, Vol. 46, No. 5 (September/October 2015).



PRACTICE AREAS

Construction Law
Municipal Law
Park District Law
Real Estate Development
Township Law

EDUCATION

J.D., Indiana University
Maurer School of Law

B.A., History & Political
Science, Indiana
University Bloomington

ADMITTED TO PRACTICE

Supreme Court of the
United States

U.S. Court of Appeals for
the Seventh Circuit

U.S. District Court for the
Northern District of Illinois

Illinois Supreme Court

RECENT PRESENTATIONS

Steve is an annual public speaker on local government legal developments, including presentations on real estate, development, tort liability, board development, governance, governmental policy and regulatory matters. He has made over 50 presentations to organizations such as the Illinois Association of Park Districts, the Illinois Institute of Continuing Legal Education, the National Business Institute, and the Illinois Park and Recreation Association. Representative presentations include:

Commissioners' Use of Social Media, IAPD State Conference (2021)

Legal/Legislative Update, IAPD State Conference (2021)

Affirmative Litigation by Municipalities, IICLE Local Government Law Institute (December 2019)

Budgets, Levies and Bonds, IAPD State Conference (2019)

Boardmanship Essentials I and II, IAPD State Conference (2018-2020)

Financing Your Next Major Capital Project, IAPD State Conference (2018)

Public Finance Continuing Disclosure Undertakings-Is your Agency up to Date? IAPD State Conference (2016)

Employee Fringe Benefits and Commissioner Access to Programs and Facilities, IAPD State Conference (2016)

Construction Law Fundamentals and New Developments, IAPD State Conference (2015)

Governor Rauner's Consolidation Task Force—Unfunded Mandates, IICLE's Local Government Law Institute (December 2015)

Recent Employment Law Developments for Illinois Local Governments, NBI (2014)

Commercial, Political, Religious and Cyber Speech, IICLE's Local Government Law Institute (December 2013)

Legislative Updates for Local Governments, IICLE's Local Government Law Institute (December 2018)

Ethics, Illinois Association of Park Districts Webinar (July 2013).

ORGANIZATIONS

American Bar Association

DuPage County Bar Association

Illinois State Bar Association

Lambda Alpha Land Economics Society

Robbins Schwartz

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Samuel Cavnar represents school districts, community colleges, municipalities, and various other public entities, along with private clients including owners, developers, general contractors, subcontractors, and various other commercial interests. Sam is an experienced negotiator of commercial and construction-related contracts, and he regularly counsels clients in the areas of board governance, bidding, procurement, tort immunity and risk management. Sam has been appointed Special Assistant State's Attorney in several matters involving construction-related transactions and litigation. Sam has successfully prosecuted and defended numerous lawsuits related to defaults, delays, extras, liquidated damages, design and construction defects, performance issues, non-payment and other similar commercial claims.

AWARDS

Illinois "Rising Star", by Super Lawyers Magazine, in the area of Construction Litigation (2012-2017)

RECENT PUBLICATIONS

"How Public Sector Entities Can Protect Themselves in Premise Liability Cases," *Chicago Daily Law Bulletin* (2018)

"Property Tax Exemption for Charitable Remains Gray Area," *Chicago Daily Law Bulletin* (2017)

Contributing author, "Organization, Finance, and Property," *Illinois School Law*, IICLE (2017)

"School District and Zoning Exemptions," *Chicago Daily Law Bulletin* (2015)

RECENT PRESENTATIONS

Navigating the Public Bidding and Contract Process, IAPD/IPRA Soaring to New Heights Conference (January 2020)

Statutory Requirements and Ethical Considerations for Public Officials, Illinois GFOA Annual Conference (September 2019)



PRACTICE AREAS

Commercial Transactions
Construction Law
Real Estate Development

EDUCATION

J.D., Wayne State
University Law School;
Managing Editor, *The
Wayne Law Review*

B.A., Michigan State
University

ADMITTED TO PRACTICE

U.S. District Court for the
Northern District of Illinois

U.S. District Court for the
Eastern District of
Michigan

Supreme Court of Illinois

Supreme Court of
Michigan

ORGANIZATIONS

American Bar
Association, Forum on
the Construction
Industry

Chicago Bar Association

Illinois Association of
School Business Officials

Robbins Schwartz

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Nicole Karas focuses her practice on local government and corporate law. She serves as outside general counsel to local governmental clients providing a wide range of legal assistance. Nicole counsels clients on major construction, land acquisition, contract drafting and negotiation, intergovernmental cooperation agreements, board policies, personnel policies, employment issues, contracts for purchases of goods and services, Open Meetings Act, FOIA issues, and ordinance/resolution drafting.

Nicole represents corporate and non-for-profit clients in various matters, including entity formation, real estate matters, contract review, leases and other transactional matters.

While in law school, Nicole was an Associate Editor of Articles, Notes and Comments for the DePaul Law Review. Nicole is the author of *EEOC v. Luce & the Mandatory Arbitration Agreement*, 53 DEPAUL L. REV. 67 (2003). Additionally, she was a Top Scholar and honored with the CALI Award in Advanced Legal Research and Constitutional Law II.

RECENT PUBLICATIONS

"Guide to the Open Meetings Act and FOIA," *Illinois Association of Park Districts* (2017)

"Buyer Beware – Construction Project and Contract Pitfalls," *Illinois Association of School Business Officials Magazine* (2017)

RECENT PRESENTATIONS

Navigating the Public Bidding and Contract Process, IAPD/IPRA Soaring to New Heights Conference (January 2020)

Legal/Legislative, Part II, IAPD/IPRA Soaring to New Heights Conference (January 2020)

Bidding and Contract Administration, IAPD/IPRA Soaring to New Heights Conference (January 2019)



PRACTICE AREAS

Construction Law

Park District Law

Real Estate Development

EDUCATION

J.D., DePaul University
College of Law, *summa cum laude*, Order of the Coif

B.A., Valparaiso University

ADMITTED TO PRACTICE

Supreme Court of Illinois

ORGANIZATIONS

Illinois State Bar Association

DuPage County Bar Association

Robbins Schwartz

KATIE ZUMALT-ROGERS

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Katie practices in the firm's public finance and taxation, commercial, construction, and real estate practice groups. Katie represents school districts, community colleges, and municipalities before the Property Tax Appeal Board and the circuit court. She represents clients in the areas of real property taxation, valuation, tax rate objections, and assessment appeals. Katie also represents clients in the areas of commercial transactions, including drafting and negotiating contracts, litigation, and alternative dispute resolution.

Prior to joining Robbins Schwartz, Katie concentrated her practice in tax planning and represented clients in corporate reorganizations. She also has experience working for government entities and non-profits.



PRACTICE AREAS

Commercial Transactions
Construction Law
Public Finance & Taxation
Real Estate Development

EDUCATION

J.D., *cum laude*, Seattle
University

M.B.A., Seattle University

B.A., University of Kansas

ADMITTED TO PRACTICE

Supreme Court of Illinois

Supreme Court of
Washington

Robbins Schwartz

CHRISTOPHER R. GORMAN

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Chris counsels employers in all aspects of labor and employment law, including labor relations, collective bargaining, grievance and dispute resolution, workplace investigation, employee discipline, terminations and reductions in force, and employment discrimination. Chris also advises clients on board governance and compliance with the Illinois Freedom of Information Act and Open Meetings Act.

Prior to joining Robbins Schwartz, Chris served as in-house counsel for a nonprofit organization, a charter school management organization and a state regulatory agency overseeing higher education financing.

RECENT PUBLICATIONS

“The Future of For-Profit Online Charter Schools,” *Labor and Employment Law Quarterly*, American Bar Association (2016)



PRACTICE AREAS

Labor & Employment

EDUCATION

J.D., University of
Minnesota Law School

B.A., University of
Minnesota – Twin Cities;
Presidential Scholar

ADMITTED TO PRACTICE

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association