

THE
Extra Mile
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Illinois Department of Revenue Denies Tax Exemption to Religiously-Affiliated Retirement Community

In a case with important implications for park districts seeking to protect their tax base, the Illinois Department of Revenue (“Department”) has denied a requested property tax exemption for the Victory Lakes retirement community in Lindenhurst, which was purchased by a Catholic-affiliated not-for-profit corporation in 2006.

In *Franciscan Communities, Inc.*, No. 07-PT-0096 (Nov. 5, 2009), a corporation controlled by the Franciscan Sisters of Chicago, a Catholic order, applied for exemption for the Victory Lakes continuing care retirement community for the 2007 year, claiming that the property was used for charitable and religious purposes.

A number of local public entities represented by HLERK’s **Steve Richart** and **Vanessa Clohessy**, intervened to oppose the exemption, arguing that it was a luxury community affordable only to very wealthy seniors. After a thirteen-day administrative trial, the Department denied the exemption, except with respect to a small chapel located in the nursing home.

With respect to charitable use claims, the Department looked at six so-called “Korzen” factors (so named after a 1968 Illinois Supreme Court case of the same name), and ultimately concluded that the primary use of the property was to

“provide a certain enhanced lifestyle to those seniors who could afford to pay for it.” Therefore, the property did not qualify for the charitable use tax exemption.

The Department also held the owner had failed to prove Victory Lakes qualified for a religious exemption for the 2007 year. Instead, the Department found Victory Lakes’ primary use was to provide residences to seniors in 2007 in exchange for fees, observing, “The Applicant is asking for a religious exemption for 320 residences on the subject property when the people residing in the residences may be indifferent, or even hostile, toward religion. This puts the Applicant in the very unique position of asking for a religious exemption for 320 residences in which, according to the Applicant, there may be no religious activity because the residents may be non-religious.” Except for a small chapel on the property, the Department concluded that Victory Lakes resembled a business with religious overtones, not a property used exclusively for religious purposes.

Victory Lakes is appealing the Department’s decision in the Lake County Circuit Court.

If you have questions concerning tax exemption issues in your park district, please contact Steve Richart or Vanessa Clohessy.

WATCH FOR an upcoming workshop on: *Understanding the Requirements of the Prevailing Wage Act, and Independent Contractor or Employee: How to Tell the Difference*, to be presented by HLERK’s **Bob Kohn** and **Cindi DeCola** on behalf of the **Accounting and Finance Committee of the Illinois Park and Recreation Association** in the near future.

Please visit our website, www.hlerk.com, for registration information as well as current legal news and archived editions of our newsletter.

HLERK has developed a model policy and administrative procedures to assist you in implementing the newly effective *Freedom of Information Act*.

You may purchase a copy by sending in the attached order form. Please contact **Rob Swain** or **Heather Brickman** with inquiries.

To receive each publication of this newsletter electronically, contact us at:
anuzzo@hlerk.com

Each edition will be delivered directly to your inbox with convenient web links to information mentioned in our articles.

New Law Extends Period for Issuance of Bonds After Referendum During Lawsuit

The *Local Government Debt Reform Act* provides that whenever bonds are required to be authorized by a referendum or backdoor referendum, the approval, once obtained, remains in effect for five (5) years after the date of the referendum or three (3) years after the end of the petition period for a backdoor referendum. [Public Act 96-0826](#) (eff. Nov. 25, 2009) adds an exception to this provision so that whenever bonds are not issued because of a court action, the five-year and three-year periods are tolled during the pendency of the court action. This exception will prevent the expiration of ref-

erendum authority during drawn-out legal battles challenging either a bond issue itself or other action related to an issue or its underlying project. The law was intended to address a situation in which the Village of Rockton had secured referendum approval for bonds in 2005 but cannot issue the bonds due to a pending court case challenging the validity of the referendum.

Please contact Heather Brickman or Steve Richart for further information about this law or other finance questions.

Freedom of Information and Open Meetings Acts Overhauled

Public Act 96-0542 (SB 189) substantially amended and strengthened both the *Illinois Open Meetings Act* (“OMA”) and the *Illinois Freedom of Information Act* (“FOIA”), effective **January 1, 2010**. The amendments substantially impact how boards operate.

With respect to the *Open Meetings Act*, there are four significant changes: 1) The Act grants individuals the right to request the Attorney General to review potential OMA violations and authorizes the Attorney General to issue binding opinions in the case of disputes; 2) The Act empowers the Public Access Counselor of the Attorney General’s office to process these requests for review; 3) The Act imposes a training requirement on designated employees, officers, or members of public bodies to be completed by July 1, 2010, and annually thereafter; and 4) The Act clarifies that records in the possession of a State’s Attorney or the Public Access Counselor for the purpose of determining compliance with the Act are exempt under the *Freedom of Information Act*.

As for the amended FOIA, the changes are far reaching and extensive. Like the OMA, the FOIA grants individuals the right to request the Attorney General to review and issue opinions regarding alleged violations.

Again, the Public Access Counselor of the Attorney General’s office will be responsible for processing these requests. The Public Access Counselor will also be involved in reviewing a public body’s decision to

deny a FOIA request when such denial is based on a few specific reasons which are defined in the Act.

Additionally, public bodies are required to designate at least one FOIA Officer who must complete a FOIA electronic training curriculum by July 1, 2010, and annually thereafter. FOIA Officers will be responsible for processing all FOIA requests, and their contact information must be prominently displayed at each administrative office and on the public body’s website.

Another major change to FOIA involves revised definitions and express statements that have greatly expanded the type of information that will be subject to disclosure upon request. For example, the Act expressly states that all records in the possession of a public body are presumed to be subject to disclosure.

In some instances, the Act identifies certain types of documents that are *per se* subject to disclosure, such as settlement agreements. Moreover, the exemptions that allow a public body to deny certain FOIA requests have been substantially revised to limit their applicability.

Other changes include shortened time lines for responding to FOIA requests (from seven to five working days), new copy fee amounts, new electronic information requirements, and increased fines for willful violations.

Please contact Rob Swain with questions regarding how these major changes will impact your district.

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* **“IN EVERY WALK WITH NATURE...”** *
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Court Requires Employer to Provide Employee a Workspace with Window as a Reasonable Accommodation under ADA

The Seventh Circuit Court of Appeals (governing all Illinois park districts) recently held in favor of an employee who alleged her employer failed to accommodate her “seasonal affective disorder” (a form of depression affected by a lack of natural light) in violation of the *Americans with Disabilities Act* (“ADA”).

In *Ekstrand v. School District of Somerset*, the employer was aware of Ekstrand’s qualifying disability and, short of granting her request to be relocated to a classroom with windows, had taken several steps to provide a reasonable accommodation. Ekstrand never provided the employer with evidence, other than her own conclusory remarks, that natural light was a nec-

essary accommodation. Eventually, Ekstrand informed the employer through her psychologist that natural light was the key to her improvement.

The court found that once the employer became aware of the necessity of natural light to Ekstrand’s medical condition, and having been informed by Ekstrand that she was able to work in a classroom with natural light, the employer was obligated to provide Ekstrand’s specifically requested, medically necessary accommodation (i.e., a classroom with windows) unless it “would impose an undue hardship” on the district.

Please contact Cindi DeCola with inquiries.

FMLA Rights of Military Families Expanded

On October 28, 2009, President Obama signed into law the *National Defense Authorization Act for Fiscal Year 2010*, P.L. 111-84 (the “NDAA 2010”), which among other things, amends the *Family and Medical Leave Act* (“FMLA”).

The FMLA was amended in 2008 to add two new leave entitlements. The first was a qualifying “exigency leave” which provided up to 12 weeks of leave to eligible employees with a covered military member serving in the National Guard or Reserves to use for “any qualifying exigency” arising out of the fact that a covered military member is on active duty or called to active duty status. The second was a covered servicemember leave which provides up to 26 weeks of leave for eligible employees to care for a covered servicemember injured while serving on active military duty.

The NDAA 2010 expands these new military leaves. First, the Act expands the exigency leave to family members of active duty service members in the Armed Forces who are deployed to a foreign country. Second, the Act amends the definitions of “covered servicemember” and “serious injury or illness” which pertain

to the covered servicemember leave. As amended, the term “covered servicemember” was expanded to include a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness and who was a member of the Armed Forces, including the Reserves and National Guard, at any time during the five-year period preceding the date on which the veteran undergoes medical treatment, recuperation or therapy.

Similarly, the term “serious injury or illness” was expanded to include an injury or illness (1) incurred by the covered servicemember before the member’s active duty and was aggravated by service in the line of duty while on active duty, and (2) of a veteran which was incurred in the line of duty while on active duty, or which existed prior to active duty but was aggravated by service in the line of duty while on active duty, and that manifested itself either before or after the covered servicemember became a veteran.

Park districts should update their FMLA policies to address these changes. Contact John DiJohn and Lori Martin with your FMLA inquiries.

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* **...ONE RECEIVES FAR MORE THAN HE SEEKS.” JOHN MUIR** *

Attorney Listing

Heather K. Brickman	Robert A. Kohn
Athena Christofalos	Jay R. Kraning
Vanessa V. Clohessy	Nancy F. Krent
Cynthia L. DeCola	Dean W. Krone
John L. Di John, Jr.	James S. Levi
Jennifer M. Deutch	Michael A. Loizzi, Jr.
Stanley B. Eisenhammer	Anthony J. Loizzi
Barbara A. Erickson	Lori G. Martin
Jeffrey C. Goelitz	Steven M. Richart
Nina R. Gougis	Bennett Rodick
Timothy E. Guare	Ellen B. Rothenberg
Terry L. Hodges	Robert E. Swain
Stephanie E. Jones	Michelle A. Todd
Debra H. Jacobson	

CONTACT US:

**3030 Salt Creek Lane, Suite 202
Arlington Heights, Illinois 60005
(847) 670-9000 phone
(847) 670-7334 fax**

**23 Public Square, Suite 260
Belleville, Illinois 62220
(618) 355-7850 phone
(618) 355-7851 fax**

**All attorneys may be reached through our
Arlington Heights office.**

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**Hodges, Loizzi, Eisenhammer, Rodick & Kohn
3030 Salt Creek Lane, Ste. 202
Arlington Heights, IL 60005**