

HONEST & OPEN GOVERNMENT UPDATE



Update

By David Livingstone
Attorney at Law

Since our last update on the Illinois Open Meetings Act (OMA) (5 ILCS 120/) and the Illinois Freedom of Information Act (FOIA) (5 ILCS 140/), there have been at least four binding opinions from the Public Access Counselor (PAC). Should you endeavor to read any of the binding PAC opinions, the new Public Access Counselor website address is: <https://foiapac.ilag.gov>. According to the website, FOIA and OMA training is now available after registering on the website. Any questions about registering, the training, or the training certificate of completion should be directed to the Illinois Attorney General Public Access Counselor's office. Now that the training is available, those trustees who have not yet completed it should add the task to their list of things to promptly do. Be sure to print a copy of the certificate of completion and file it with your District's secretary.

OPEN MEETINGS ACT

In **22-006**, a school board came to a "consensus" to make the wearing of facial masks in the school district optional as of a date certain. This issue was not listed on the regular meeting's agenda. The meeting's draft minutes stated that the Superintendent was directed to notify the District community that masking would be optional as of the certain date. Additionally, a letter was posted to the District's website in which the Superintendent said the Board made a decision to make masking optional. The PAC said that "final action", although it is not defined in the Act, generally is something that brings a

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matter to a resolution. The PAC said that this "consensus" did constitute a final action as evidenced by the minutes and the Superintendent's letter, which was an implementation of the consensus. The PAC said that the District's argument that the lack of a roll call vote meant there was no final action was immaterial – a public body cannot circumvent the Act's requirements simply by not taking a roll call vote.

In **22-007**, a citizen complained that a Village did not provide links or phone number on its meeting agenda to allow members of the public to attend public meetings held remotely pursuant to Section 7(e). Village replied that it posted a YouTube link for each meeting on its social media page, and the meetings were broadcast live on YouTube. The PAC said this was not enough. Public bodies must provide the link on the meeting's agenda, and the agenda must be posted on the public body's website. This is the second PAC opinion that made clear it does not matter if the public body's website is not maintained by full-time staff. If your District has a website, the remote meeting agenda must be posted there. Social media does not count.

In **22-008**, a citizen complained that a County's farming committee approved two Resolutions the general subject matter of which were not clearly stated

on the meeting's agenda. The committee adopted one resolution to recommend the County Board attain crop insurance and another resolution recommending the County Board to borrow money for crop expenses. The County contended that these items were germane to an agenda item pertaining to the committee's recommendation of "farming options for the County Farm" to the County Board. The PAC said that although "general subject matter" is not defined in the Act, Section 2.02(c) of the Act requires that the agenda include enough and sufficient detail to provide notice to the public of what actions a public body may take at the meeting. Here, the PAC said the committee did not sufficiently state the general subject matter of these two final actions on its agenda and, as such, it did not comply with the OMA. However, the PAC also said since the County Board subsequently took proper action on the committee's recommendations, there was no "legal or practical reason for the Committee to prepare a new agenda and re-vote on its final actions."

FREEDOM OF INFORMATION ACT

In **22-009**, a requestor sought the name, job title, hire date, department name,

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Honest & Open Government

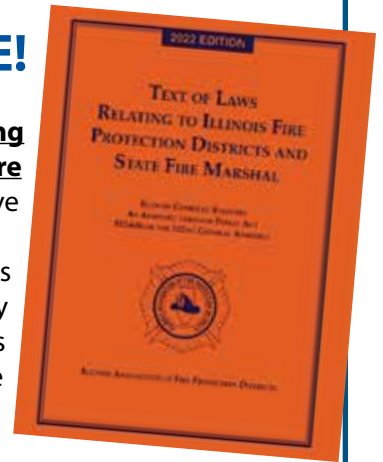
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work address and email address, and union affiliation for each City employee covered by a collective bargaining agreement. The City properly extended its time to respond by five business days, and it responded five business days later with a denial pursuant to Section 7.5(zz) of the Act which exempts from disclosure "information prohibited from being disclosed under the Illinois Public Labor Relations Act." The City said the Act precluded it from disclosing information personally identifying employee membership or membership status in a labor organization. The PAC Said the City properly denied the request because Section 6(c-5) of the ILPRA prohibits a public body from disclosure certain employee information, including information that would indicate membership status in a labor organization. ■

NEW EDITION AVAILABLE!

The 2022 Edition of the **Text of Laws Relating to Illinois Fire Protection Districts and State Fire Marshal** is currently in production and will arrive in June.

An IAFFPD exclusive resource, this book is a compilation of state laws which most directly apply to fire protection districts and the Illinois fire service in general. It contains the Fire Protection District Act, Open Meetings, Freedom of Information Act, Municipal code, Vehicle code and numerous other Acts as amended through Public Act 100-576 of the 100th General Assembly.



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PENSION POINTERS



Pension Case Law Update

By James G. Wargo
Ottosen DiNolfo Hasenbalg & Castaldo, Ltd.

The following are summaries of several significant pension cases that have been issued by the Illinois appellate courts in the last year:

Duty Disability Pensions:

Village of Roselle v. Board of Trustees of the Roselle Firefighters' Pension Fund, 2021 IL App (2d) 200360. The Second District Appellate Court upheld a ruling of the Board of Trustees of the Roselle Firefighters' Pension Fund ("Board") finding that a firefighter was entitled to a line-of-duty disability pension for a back injury he suffered while filling a cooler with bottled water at the station.

On September 18, 2016, firefighter Ryan Case was directed by his shift commander to move cases of bottled water and fill a cooler for an upcoming event. While filling the cooler, Case "felt a pop and pain" and was taken to the emergency room. An MRI showed a lower back disk herniation, and he was unable to return to fully duty and applied for a disability pension.

The Village of Roselle ("Village") intervened in Case's pension disability proceeding and argued that the Board should deny the disability pension request because Case had failed to disclose during his preemployment physical examination a long history of back pain.

The Board awarded Case a duty disability pension. The Board concluded that Case's "untruthfulness" during his preemployment physical examination was not an issue to be adjudicated by the Board.

On administrative review, the circuit court reversed the Board's award of a duty disability pension. The circuit court

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concluded that the injury was not caused by an "act of duty" because Case was not "saving the life or property of another" when his injury occurred. The circuit court further ruled that the Board had the statutory authority to deny Case's application based on his preemployment untruthfulness.

The appellate court reversed the circuit court's ruling and upheld the Board's award of a duty disability pension. The court reasoned that Case's injury had occurred while performing an act required by the fire department's rules and regulations. The court also held that the Board did not have the statutory authority to deny the disability pension on the basis of Case's preemployment untruthfulness.

Kelly v. Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago, 2022 IL App (1st) 210483 (May 5, 2022). The First District Appellate Court reversed the retirement board's determination that a police officer was not disabled and ordered the retirement board to award him a non-duty disability benefit.

On April 7, 2014, Chicago police officer Patrick Kelly killed a knife-wielding individual who supposedly attacked him while responding to a domestic disturbance. In 2016, Kelly told the police department that he could no longer work full duty and was taken off street duty. On November 1, 2017, Kelly filed an injury on-duty report, claiming that

the 2014 shooting caused him to suffer posttraumatic stress disorder ("PTSD"). On November 21, 2018, Kelly filed an application with the Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago ("Board") seeking a duty disability pension, claiming that he was disabled due to PTSD, which was caused by an act of duty associated with the incident on April 7, 2014.

In addition to the 2014 incident, Kelly was involved in several other incidents dating back to 2005. In one of these incidents in 2010, Kelly's weapon was used in a shooting involving his friend, Michael LaPorta. After a lawsuit, a civil jury found that Kelly had shot LaPorta.

On October 31, 2019, the Board found that Kelly was not disabled as a result of the April 7, 2014, incident and denied the pension request. On administrative review, the First District Appellate Court affirmed the Board's denial of a duty-disability pension but concluded that Kelly had established that he was disabled and entitled to a non-duty disability pension.

Pension Forfeiture:

Abbate v. Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago, 2022 IL App (1st) 201228 (June 6, 2022). In *Abbate*, the First District Appellate Court upheld the decision of the Retirement Board of the

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Pension Pointers

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Policemen's Annuity and Benefit Fund of the City of Chicago ("Board") that a former Chicago police officer, Anthony Abbate, forfeited his right to a pension as a result of a felony conviction associated with an aggravated battery committed while off duty at a local tavern.

While off duty on February 19, 2007, Abbate was drinking at a Chicago bar and got into an altercation with another customer. After the tavern's bartender, Karolina Obryzcka, told Abbate to stop, Abbate went behind the bar and repeatedly kicked her. As a result of this incident, Abbate was convicted of a felony for aggravated battery against Obryzcka.

In 2018, Abbate filed for a pension. The Board denied the pension request based on his felony conviction, which the Board determined was related to his service as a police officer.

On administrative review, the circuit court reversed the Board's decision to deny the pension. On appeal, the appellate court reversed the decision of the circuit court and upheld the Board's denial of the

pension upon finding a sufficient nexus between Abbate's service as a police officer and his felony conviction.

The court reasoned that Abbate had announced he was a police officer at the bar. In addition, the evidence from a related federal civil trial showed that a driving force behind Abbate's conduct was the Chicago Police Department's widespread practice of failing to investigate and discipline its police officers.

Surviving Spouse Benefits:

Thornley v. Board of Trustees of River Forest Police Pension Fund, 2022 IL App (1st) 210835 (March 31, 2022). In a case of first impression, the Illinois Appellate Court held that a surviving spouse of a deferred pensioner was not eligible to receive surviving spouse benefits until her deceased husband would have reached 60 years of age as opposed to immediately after his death.

According to the facts, Michael Thornley, began working for the River Forest Police Department in 1997 and married Carrie Thornley ("Plaintiff"). Thornley resigned from the police department in 2015 after 18 years of

service and would not have been eligible to receive a pension until he reached age 60 in 2032.

Upon her husband's death, Plaintiff applied for a surviving spouse benefit. The Board of Trustees of the River Forest Police Pension Fund ("Board") ruled that Plaintiff was entitled to the requested survivor benefits but was not eligible for the benefits until 2032 when her husband would have reached age 60.

On administrative review, the Illinois Appellate Court affirmed the Board's decision. The court reasoned that the triggering point to receive a pension is not simply "upon the death," but "the death of a police officer entitled to a pension." At the time of his death, Thornley was not eligible for his pension benefits until 2032.

It should be noted that for a deferred firefighter's surviving spouse, the language found in Section 4-114 (applicable to firefighters) under Article 4 of the Pension Code is different from Section 3-112 under Article 3. Under the same facts presented in the *Thornley* case, a surviving spouse of a Tier I former firefighter with 18 years of service would begin receiving surviving spouse benefits upon the death of the deferred firefighter. ■



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