



NEWS

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Serving the Interests of Lawyers Dedicated to Government Service

A Message from the President



It is an honor and privilege to serve as President of the Illinois Government Bar Association. We have had some exciting speakers these past few months and our attendance has been very good. Our most recent past speakers are mentioned in this newsletter. GBA will continue to have high caliber

speakers who will discuss topics of interest to government lawyers such as electronic discovery, ethics, civil rights and the Illinois Supreme Court. I hope you all can attend our upcoming luncheons.

I would like to focus on giving back to the community. As an organization we have begun that with our Central Illinois Food Bank drive during the Holiday Party. As a Board we also made a donation to the Central Illinois Food Bank and to Sojourn to help pay down their mortgage. Several of our members are active with Sojourn and help them with their mission. We have also encouraged our members to volunteer as mentors for District 186. Any way you can help make Springfield a better community is a benefit to all of us.

I would also like to thank our officers, board members and our members for helping us have another successful year. Feel free to contact me if you have any ideas to make GBA a better organization or if you would like to be a speaker at a future luncheon.

Happy New Year!

F. Martinez

GBA's Member Spotlight: Appellate Judge M. Carol Pope



Justice Pope has served on the Fourth District Appellate Court since 2008. Beginning in November of 1991, she was the resident circuit judge of Menard County. Before becoming a member of the judiciary, she served as law clerk to the Honorable J. Waldo Ackerman, Chief United States District

Judge for the central District of Illinois (1979-1983). She spent a year in private practice in Chicago, and then twice was elected Menard County State's Attorney.

In 1979, Justice Pope obtained her J.D. degree, with honor, from DePaul University College of Law, where she held the position of Lead Articles Editor of the Law Review. She graduated from the University of Illinois, Phi Beta Kappa, *magna cum laude*, in 1975, and was named to the Bronze Tablet.

Currently, Justice Pope is the president of the Illinois Judges Association. In addition, the Supreme Court has appointed Justice Pope to serve on the Executive Committee and as Chair of the Committee on Education of the Illinois Judicial Conference. Moreover, for the last sixteen years, Justice Pope has served as a faculty member for the New Judge Seminar.

Justice Pope has participated in many bar-related activities including the Lincoln-Douglas American Inn of Court, where she is a past-president. She is an active member of the community where she and her husband of 36 years reside. She has two sons and two beautiful grandsons.

A. Lang

Eric Madair Speaks about State Pensions



Article 13, Section 5 of the Illinois State Constitution: PENSION AND RETIREMENT RIGHTS

“Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.”

On October 13, 2011, attorney Eric Madiar spoke to the Government Bar Association about the proposed changes to the Illinois pension system. Mr. Madiar is the Chief Legal Counsel and Parliamentarian for the Senate President, Senator John J. Cullerton.

Pensions are under siege in Illinois for two reasons. The first is the 2008 stock market crash, after which the pension fund lost money. However, this is not as significant a reason as proponents for pension change would have you believe; in fact, Illinois' pension obligations were only funded at 39% *before* the crash. The State owed \$85 billion dollars in pension obligations before the market declined. The second reason pensions are under siege is, quite simply, a fight over money. Revenues from new taxes are funding only old obligations, from as long ago as 1995. Practically speaking, then, those pushing for pension reform in Illinois are doing so for a political end. The legislature would rather cut benefits for *current* pensioners just so that it does not have to make other, harder cuts, or raise taxes. Any change to the current pension system would, however, be unconstitutional.

Illinois, like many states, has a constitutional amendment allowing for pensions. This clause was added to the Illinois Constitution after the 1970 constitutional convention, and it was added for three reasons. First, public employees at that time thought that their pensions were in danger. This was a reasonable assumption, because even then the public pension was funded only at 42%. Second, the clause was included to assure police and fire department employees that their municipal pensions were not going to be raided to pay for other municipal projects, such as street repair. Third, there was an overarching desire to change the law. Prior to the constitutional amendment the General Assembly saw pensions as gifts and, therefore, as revocable. The amendment was designed to ensure that pensions were an irrevocable right.

The constitutional amendment was designed to protect the rights of pensioners. It bans the General Assembly from unilaterally changing pension benefit rights for current employees. Because pension rights are contractual in nature, general contract principles apply. Any change to the State's current pension obligations would therefore require actual consideration. Actual consideration is not present when an employee is offered a choice between accepting a proposed change to the pension system or being fired.

The clause also prohibits changing employee contribution rates. Of course, the million dollar question (or, more accurately, the billion dollar question), involves funding. The clause does not require a specific funding level. Nevertheless, it does require payment when due.

There are three main false claims related to the pension clause. One, the clause only safeguards benefits earned through past service, not future earning. Both other states that have similar provisions, and judgments of Illinois courts show that pension rights vest when one starts work. The second false claim is that the legislature nevertheless retains the right to cut benefits during a fiscal crisis. This idea was rejected by the constitutional convention, and has been subsequently rejected

by Illinois courts as well. The third misconception is that pensioners are only entitled to money if there is money in the fund. The plain language of the clause, court precedent, and also statements made at the constitutional convention all show that this is false. While true that pensions are under siege in Illinois, the plain language of the pension clause, comments made during the constitutional convention, as well as appellate and supreme court precedent all show that any unilateral change to vested pension rights would be unconstitutional.

M. Delcomyn

September's Luncheon: Mayor Mike Houston Talks Railroads



The Honorable Mike Houston talked at the Government Bar Association luncheon on September 14, 2011 about the future of high speed rail in Springfield, IL. Mayor Houston communicated the challenges that Springfield faced in trying to prevent high speed rail in going down the 3rd Street corridor and the significant impact of having more trains going down the 3rd Street corridor instead of consolidating the rail lines down the 10th Street corridor. He said that a study has shown that adding more freight traffic on the 3rd Street corridor (up to 60 trains per day) would make downtown less appealing to businesses and residential growth; severely affect the Medical District through vibration, plus development and travel impediments; and cause additional traffic delays. Mayor Houston believes that by consolidating the traffic presently on the 3rd Street corridor and 19th Street corridor to the 10th Street corridor would allow for fewer traffic delays, encourage more development in the areas where the rail tracks were no longer needed, and would open up the possibility of a transportation hub.

A new study being encouraged by Union Pacific favors looking at Springfield in a "broader" study that emphasizes the project on a larger scope (not just the local impact as favored by Sangamon County and City of Springfield leaders). This larger study puts at risk the findings that show the 10th Street corridor consolidation would be the best on a micro-level because there would be a significant cost savings to the railroad developers. Adding a second rail down the 3rd Street corridor for passenger only traffic would be the most economical to construct. The current state of what happens with high speed rail is up-in-the-air as federal funding dries up and newer studies are completed. Mayor Houston said that it would be a minimum of 5 years before work would actually take place based on all of the regulatory hurdles and planning that would need to be completed to even begin work.

R. Patino

January Trivia (see last page for answers):

- (1) How many people went on Noah's ark?
- (2) What year did Elvis Presley die?

- (3) What is the capital of Brazil?
- (4) Where was Marco Polo's home town?
- (5) How many passing yards did Tim Tebow throw against the Pittsburg Steelers on January 8, 2012 (which happens to correspond to his favorite Bible verse)

November's Luncheon: Jeopardy IDOT Style



At the November meeting John Jones and Jennifer Kuntz of the Illinois Department of Transportation spoke on impaired driving and traffic safety in general. The topics covered included the role of the Secretary of State in the administration of Statutory Summary Suspensions, the Breath Alcohol Ignition Interlock Devices and the penalties associated with the failure or refusal to submit to alcohol tests to driving privileges.

They discussed the impaired driving sections of the Illinois Vehicle Code, as well as how the state may charge and prove the elements of driving under the influence. Standardized field sobriety tests and the recent Illinois Supreme Court case allowing for the administration and admission of the Horizontal Gaze Nystagmus, one of the standardized tests, were also covered.

The traffic safety campaigns such as Click It or Ticket and You Drink You Drive You Lose were included.

They used a Jeopardy format which allowed GBA members to participate and handed out lots of giveaways for the members who participated in forming the questions.

J. Jones

2011 Holiday Party



A larger than normal gathering was held on December 14, 2011, at D.H. Browns for the annual GBA Holiday Party. D.H. Browns once again supplied the wine and beer which was greatly appreciated by all who attended. The food was plentiful with lots of bidding on the auction items for our annual scholarship. We raised over \$600.00. Thank you to all those members who donated or purchased an item at the auction. A special thank you goes to Don Tracy, who has made monetary donations each year. We appreciate his support of the scholarship fund. It was great to see some

people that had not been at recent luncheons and meet new members. A great time was had by all.

B. Rowe

New FOIA Legislation

Governor Quinn has signed 5 new laws amending the Freedom of Information Act.

A public body may now elect to exempt the following information in response to a request to inspect or copy public records under 5 ILCS 140/7(1):

- personally identifiable information which is exempted from disclosure under Section 19.1(g) of the Toll Highway Act as a result of Public Act 97-342, effective August 12, 2011.
- names, addresses, or other personal information of minors who participate or register in programs of park districts, forest preserve districts, conservation districts, recreation agencies, and special recreation association as a result of Public Act 97-385, effective August 15, 2011.
- names, addresses, or other personal information of participant and registrants in programs of park districts, forest preserve districts, conservation districts, recreation agencies, and special recreation association where programs are targeted primarily to minors as a result of Public Act 97-385, effective August 15, 2011.
- correspondence and records that pertain to appeals under Section 11-8 of the Public Aid Code as a result of Public Act 97-452, effective August 19, 2011.
- correspondence and records that may not be disclosed under Section 11-9 of the Public Aid Code as a result of Public Act 97-452, effective August 19, 2011.

Moreover, the list of statutory exemptions in Section 7.5 of the Act has been amended to include the names and information of people who have applied for or received Firearm Owner's Identification Cards under Public Act 97-80, effective July 5, 2011.

Several changes have also been made regarding fees under Section 6 of the Act. Effective August 26, 2011, Public Act 97-579 authorizes the FOI Officer to charge an hourly fee up to \$10 after the first 8 hours spent by personnel in searching for and retrieving requested records for commercial requests. Furthermore, the FOI Officer may charge the actual retrieval and transportation costs for commercial requests when public records are stored off-site at a third-party storage company under contract with a public body. If either fee is charged, then the FOI Officer must provide the commercial requester with an accounting of all fees, costs, and personnel hours in connection with processing the FOIA request.

Another key FOIA development under Public Act 97-579 relates to recurrent requesters. A "recurrent requester" is "a person that, in the

12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of 7 requests for records within a 7-day period.” (See 5 ILCS 140/2(g).) Upon receipt of such a request, the FOI Officer must respond within 5 business days and notify the requester that the public body is treating the matter as a recurrent request, explain the basis for doing so, describe the proposed responses that could be asserted, and indicate that an initial response will be forthcoming within 21 business days. (See 5 ILCS 140/3.2(b).) In the initial response, the FOI Officer must (1) supply an estimate as to both the fees to be charged and the time required for processing the request, (2) deny the request based on an appropriate exemption, (3) notify the requester that the request is unduly burdensome and afford an opportunity to narrow the request to a more manageable task, or (4) provide the requested public records. (See 5 ILCS 140/3.2(a).) Once the requested records have been retrieved, and any fees have been paid in full, then the public body must thereafter release the records within a reasonable period of time, considering the size and complexity of the request. (See 5 ILCS 140/3.2(c).) Requests made by news media and non-profit, scientific, or academic organizations will not typically constitute a recurrent FOIA request.

Finally, Public Act 97-579 revises a number of the provisions regarding the responsibilities of the Public Access Counselor under Section 9.5 of the Act. Commercial requestors may not file a request for review with the Public Access Counselor other than for the limited purpose of determining whether such a categorization by a public body was appropriate in the first instance. (See 5 ILCS 140/9.5(b).) Next, the predetermination process involving the Public Access Counselor has been repealed for exemptions claimed by public bodies under Sections 7(1)(c) and 7(1)(f). The initial timeframe for responding to requests for review has been extended from 7 working days to 7 business days for all affected parties (see 5 ILCS 140/9.5(c)-5(d)), and the Public Access Counselor may extend a request for review up to 30 business days instead of the previously permitted 21 business days (see 5 ILCS 140/9.5(f)).

K. Kloppe

Trivia Answers

1. 8
2. 1977
3. Brasilia
4. Venice
5. 316 yards (favorite verse is John 3:16)

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Upcoming Events:

Government Bar Association:

Jan. 19 – January Luncheon @ Maldaner’s: History of the Preservation Commission and Stories about the Illinois Judiciary

Feb. 16 – February Luncheon @ Maldaner’s: Mississippi Civil Rights Experiences

March Luncheon @ Maldaner’s: TBD

April Luncheon @ Maldaner’s: TBD

May 17 – May Luncheon @ Maldaner’s: Creating and Maintaining an Ethical Environment

June 14 – Annual Party at the Corkscrew at 4:30 PM

Central Illinois Women’s Bar Association:

Jan. 12 – Past Presidents Reception @ Pinnacle Club

Jan. 17 – January Luncheon

Feb. 21 – February Luncheon.

Feb. 23 – Sojourn Fundraiser

March 17 – March Luncheon

April 17 – April Luncheon.

May – CIWBA Judicial Reception. More details to follow.

Sangamon County Bar Association:

May 1 – Law Day Luncheon