

Lake County Municipal League

**Newly Elected Officials
Legal Session**

June 1, 2013

Presented by:
Adam Simon
Julie Tappendorf

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Outline of Legal Session

- ▶ Part 1: An Overview of the OMA and FOIA
- ▶ Part 2: Ethics for Municipal Officials
- ▶ Part 3: Public Finance

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PART 1

**An Overview of the Open Meetings
Act and FOIA**

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All kinds of “meetings” are subject to the OMA

“any gathering, whether in person or by video or electronic conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous communication, **of a majority of a quorum** of the members of the public body held **for the purpose of discussing public business**”

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OPEN MEETINGS ACT:

Be Wary of Unofficial Board Meetings

- ▶ Any gathering may be subject to the Open Meetings Act, if:
 - A majority of a quorum is present, and
 - They discuss public business

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E-mail: Friend or Foe?



- ▶ If the e-mail exchanges are contemporaneous, they may constitute an improper meeting
- ▶ Avoid repeated use of “reply to all”

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May we let an official participate in a meeting electronically?

- ▶ Yes, but only if you have adopted a written procedure
- ▶ Absence may only relate to illness, business or emergency; not vacation
- ▶ Motion required each time to authorize remote attendance
- ▶ Quorum must be *physically* present



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May a board member vote by proxy when not present at the meeting?

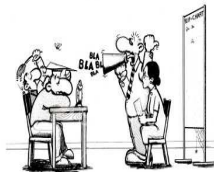
NO.



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Right to Public Comment

- ▶ "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." 5 ILCS 120/2.06(g).



Public comment can be limited, but only by previously adopted written policies

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You've Got No Business Without a Quorum

- ▶ You must have a majority of the body present
- ▶ What can you do without a quorum?
 - Those present at the meeting may take action to compel attendance of absent Board members or to adjourn the meeting to a future date

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Notice and Agenda

- ▶ Annual notice of all regular Board meetings must be provided and posted on website (if applicable)
- ▶ Agendas must be posted no later than 48 hours before a meeting
- ▶ Agendas must be provided to news media (if requested) and posted on web site (if applicable)

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Content of Agenda

- ▶ Agenda must be complete and provide a reasonable description of the items to be considered
- ▶ Agenda must be posted in advance of meeting
- ▶ As of 1/1/2013, agendas must set forth the general subject matter of any resolution or ordinance that will be the subject of final action (5 ILCS 120/12-02(c) (P.A. 97-0827))

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Special and Emergency Meetings

- ▶ Special meetings require specific notice of each and every topic to be discussed
- ▶ Less than 48 hours notice OK for bona fide emergency meeting
- ▶ Emergency example: Village hall just burned down; self-created emergencies do not count

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Do the open portions of our meetings need to be taped?

- ▶ Recording of open meetings not required
- ▶ The public has a right to record open meetings
- ▶ Village may adopt reasonable rules regarding recording by the public
- ▶ But, see recent PAC opinion that found advanced registration requirements a violation of OMA
- ▶ All closed sessions *must* be recorded

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Closing a Meeting to the Public

- ▶ Only certain topics may be discussed
- ▶ Motion required to go into closed session
 - I make a motion that we go into closed/executive session for the purposes of discussing...
 - Do not need to include specific statutory cite
- ▶ Discussions must be recorded in writing and by audio or video

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What Topics Are We Required to Discuss In Closed Session?

- ▶ OMA Exceptions *authorize*, but do not require, closing meeting to discuss any of the 25 permitted subjects

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What are the rules about recording closed sessions?

- ▶ Section 2.06 of the Open Meetings Act requires audio or video recording of all closed sessions.
- ▶ Closed session tapes are *usually* not disclosable under FOIA.
 - Action to enforce OMA - "in camera" inspection

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The closed session tapes can only be destroyed if:

- ▶ The board has approved the minutes of the closed sessions, regardless of whether the minutes have been released for public review;
- ▶ More than 18 months have elapsed since the date of the closed session;
- ▶ There is no court order requiring the preservation of such recording; and
- ▶ The board has not passed a motion requiring the preservation of the verbatim recording of that meeting.

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What can we do about a Board member who leaks closed session materials to the press?

- ▶ Attempt to censure the Board member
- ▶ Seek an injunction

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Do we need to approve closed session minutes we do not plan to release?

- ▶ Yes, minutes should be reviewed for accuracy of content and then approved
- ▶ Must be reviewed every 6 months to determine if need for confidentiality still exists

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Can we talk about where a new public building should be located in closed session?

- ▶ Discussion must relate to purchase or lease of a particular parcel or parcels of real property
- ▶ Section 2(c)(5) of the Act

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Can we criticize the performance of an employee in closed session?

- ▶ Yes, it is permissible to discuss the discipline, performance or dismissal of specific employees in closed session



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FOIA - Public Records

- ▶ "Public records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.

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Special Considerations (Emails):

- ▶ What if the e-mail is on a municipal computer or account?
 - If it is about municipal business, it is a public record
 - If it is not about municipal business, it is not a public record



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Special Considerations (Emails):

- ▶ What if the e-mail is on my home computer?
 - If it is about municipal business, it is a public record
 - If it is not about municipal business, it is not a public record



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Special Considerations (Texts):

- ▶ What if I text message from my village-issued or personal cell phone?
 - If it is about municipal business, it is a public record
 - If it is not about municipal business, it is not a public record

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PAC Opinion 11-006


- ▶ City of Champaign Council members texting during meeting.
- ▶ Text messages on personal devices – NOT exempt and must be released.
- ▶ Upheld by Circuit Court



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PART 2



Good Governance: Ethics for Municipal Officials



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State Officials and Employees Ethics Act – Gift Ban


- ▶ Who Must Comply?
- ▶ What is a “Gift”?
- ▶ What is a “Prohibited Source”?
- ▶ Any Exemption?

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What Gifts are Permitted – 12 Exceptions to the Ban

- Opportunities and services available on the same terms as for the general public.
- Anything bought at market value.
- Political contributions.
- Educational missions.
- Travel expenses for a meeting to discuss municipal business.
- Gifts from relatives.
- Gifts provided on the basis of a personal friendship.
- Bequests and inheritances.
- Food or refreshments not exceeding \$75.00 per person on a single calendar day that are:
 1. Consumed on the premises from which they were purchased or prepared; or
 2. Purchased ready to eat and delivered.
- Food, transportation, lodging, transportation, and other benefits from outside activities.
- Intra-office and inter-office gifts.
- Items from a prohibited source during a calendar year of a cumulative value of \$100 or less.



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What if I Return the Gift?

- ▶ An individual may avoid violation of the Act by returning the prohibited gift to the donor or giving the gift (or its equivalent) to charity.

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State Officials and Employees Ethics Act – Prohibited Political Activities

- ▶ Regulates the political activities of officers and employees
- ▶ Employee may not be required to perform political (campaign) activities as part of, or a condition of, employment.
 - During “compensated time”
- ▶ Employees can participate in political activities during time off (voluntarily)
 - Special rules for serving as election judge

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State Officials and Employees Ethics Act – Prohibited Political Activities

Related political prohibition: Election Interference,
10 ILCS 5/9-25.1

- ▶ No public funds shall be used to urge any voter to vote for or against any candidate or proposition.
- ▶ This section does not prohibit the use of public funds to disseminate factual information relative to a referendum
- ▶ Progressive discipline

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Disclosure of Economic Interests

- ▶ Requires the disclosure of financial interests related to public employment.
 - Who?
 - What?
 - Where?
 - When?



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Conflicts of Interest

- ▶ Public Officer Prohibited Activities Act, 50 ILCS 105/0.01 *et seq.*
 - Elected or appointed officials (except those serving on advisory panels or commissions) are prohibit from:
 - Having an interests in contracts
 - Representing applicants or bidders
 - Accepting anything of value in exchange for vote

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Conflicts of Interest

- ▶ Municipal Code - Conflict of Interest Statute, 65 ILCS 5/3.1-55-10.
 - Municipal officer cannot have a direct or indirect interest in:
 - any contract, work or business of the municipality; or
 - the sale of any article
 - Municipal officer cannot have a direct or indirect interest in the purchase of any property owned by the municipality, that is sold for taxes/assessments, or is sold by virtue of legal process brought by the municipality.

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Conflicts of Interest – Exemptions

- Contracts (more than \$1,500; \$25,000 annual aggregate limit)
- Contracts (\$2,000 or less; \$4,000 annual aggregate limit)
- Minor Interests (less than 1% share)
- Public Utilities
- Public Companies (direct interests)
- Public Companies (indirect interests)
- Local Banks

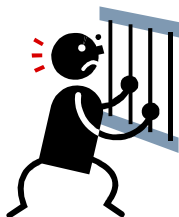
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Official Misconduct

- ▶ Criminal Code - Official Misconduct Statute, 720 ILCS 5/33-3
 - A public officer or employee is guilty of official misconduct when he or she:
 - intentionally or recklessly fails to perform a mandatory duty; or
 - knowingly performs an act that he or she is forbidden by law to perform; or
 - performs an act in excess of his or her authority with the intent to obtain personal advantage for himself or herself or for another; or
 - solicits or knowingly accepts a fee or reward not authorized by law.

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Be Good...



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PART 3

Public Finance: An Explanation of the Annual Financial Documents Prepared and Approved by a Local Government



- ▶ Budget & Appropriation Ordinance
- ▶ Total Compensation Package Report
- ▶ Prevailing Wage Act Ordinance
- ▶ Annual Audit
- ▶ Annual Treasurer's Report
- ▶ Tax Levy Ordinance
- ▶ Tax Abatement Ordinance*



Budget & Appropriation Ordinance

- ▶ The Budget & Appropriation Ordinance is the legal authority to spend money
- ▶ No expenditure may be made without a prior appropriation
- ▶ Except as provided by law, all contracts may not exceed one year because there is not a prior appropriation



Budget & Appropriation Ordinance

- ▶ Budget System
 - Must adopt budget by beginning of fiscal year
 - “Budget Officer” has special statutory powers
 - Easier to amend
- ▶ Appropriation System
 - Must be adopted by end of 1Q of fiscal year
 - Normally facilitated by Finance Dir./Manager
 - More limitations on amendments

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Posting of Total Compensation

Public Act 97-609, effective January 1, 2012, requires IMRF Employers to post the Total Compensation Package for certain employees



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Posting of Total Compensation

“Total Compensation” means any payment by the employer to the employee for salary, health insurance, a housing allowance, a vehicle allowance, a clothing allowance, bonuses, loans, vacation days granted, and sick days granted.

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Posting of Total Compensation

► Who?

- Employees who receive a total compensation package that exceeds \$75,000 per year
- Employees who receive a total compensation package that exceeds \$150,000 per year



Posting of Total Compensation

► When?

- For employees with total compensation which exceeds \$75,000, it must be posted within 6 business days after the employer approves a budget



Posting of Total Compensation

► When?

- For employee with total compensation which exceeds \$150,000, it must be posted at least 6 days before the employer approves the employee's total compensation package



Prevailing Wage Act

- ▶ 820 ILCS 130/9
- ▶ Each public body shall during the month of June of each calendar year, investigate and ascertain the prevailing rate of wages...and...shall promptly file, no later than July 15 of each year, a certified copy thereof in the office of the Secretary of State at Springfield and the office of the Illinois Department of Labor.
- ▶ Most public bodies adopt the Dept. of Labor findings applicable to their host county

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Annual Audit

- ▶ For Municipalities: 65 ILCS 5/8-8-3
 - Mandatory for all cities that:
 - Pop. > 800, or
 - Have bonded debt, or
 - Own any type of public utility

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Annual "Treasurer's Report"

- ▶ Due within 6 months of close of fiscal year
- ▶ For Municipalities: Must be published by the Clerk in a newspaper and filed with the County Collector

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Annual "Treasurer's Report"

- ▶ All moneys received by source
- ▶ All moneys paid out by the government where the total amount paid to the vendor during the fiscal year exceeds \$2,500
- ▶ All moneys paid out by the municipality as compensation for personal services... listing each employee by category:
 - (A) under \$25,000.00;
 - (B) \$25,000.00 to \$49,999.99;
 - * * *
 - (E) \$100,000.00 to \$124,999.99; or
 - (F) \$125,000.00 and over.
- ▶ A summary statement of operations for all funds and account groups of the government

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Property Taxes

There are 2 principal controls over how much a taxing body may levy:

- ▶ Tax-specific maximum allowable rate
- ▶ Property Tax Extension Limitation Law

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Property Taxes

- ▶ Property Tax Extension Limitation Law
- ▶ The "Tax Cap"
- ▶ Permits voters to exercise greater control over the rate of growth of property taxes in non-home rule units of government
 - Except by referendum, limits rate of growth by reference to CPI
 - All *new* taxes must be approved by referendum

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Aggregate Extension

- ▶ The total dollars allowed to be collected for all of the funds which are subject to the Tax Cap. These funds include most of a taxing body's operating funds; e.g., corporate, audit, liability and insurance and pension/social security, etc.

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Extension Limitation

- ▶ The percentage change from the previous year in the Consumer Price Index-All Urban Consumers (or 5%, whichever is less), (measured from December to December)
- ▶ <http://www.revenue.state.il.us/LocalGovernment/PropertyTax/CPIhistory.pdf>
- ▶ For the 2012 levy, the Extension Limitation was 3.0%
- ▶ For the 2013 levy, the Extension Limitation is 1.7%

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Limiting Rate

- ▶ The maximum amount of money which may be collected, for those funds subject to the Tax Cap, by a taxing body for the current year.
- ▶ This is the "Tax Cap"

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Property Tax Schedule

- ▶ Truth in Taxation Law
- ▶ Tax Levy Ordinance
- ▶ Tax Abatement Ordinance



Truth in Taxation Law

- ▶ If Any Proposed Increase Over 105% From Previous Aggregate Extension, You Must Hold A Public Hearing On The Increase
- ▶ This Is A Sunshine Law – Not A Substantive Cap So Long As You Comply With The Notice Requirement



Truth in Taxation Hearing

- ▶ Make Estimate Of Levy Available At Least 20 Days In Advance Of Adoption
- ▶ Publish Notice Of Hearing 7 To 14 Days In Advance
- ▶ At Hearing, Explain Reasons For Increase
- ▶ Hearing Can't Coincide With Budget Hearing, But Can Coincide With Adoption Of Tax Levy



Tax Levy Ordinance



- ▶ File your levy with the County Clerk(s) by the LAST Tuesday in December, or else!

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Tax Abatement Ordinance

- ▶ There are 2 instances where a tax abatement ordinance may be used:
 - Discretionary reduction of taxes; or
 - Alternate Revenue Bonds (Annual)
- ▶ Generally, a tax abatement ordinance needs to be adopted by March 1.

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Questions



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Where can I get additional information about municipal issues?

- ▶ Visit our website at <http://ancelglink.com> to download various publications for free in our Resource Center.
- ▶ Visit our Municipal Minute blog: <http://municipalminute.ancelglink.com>
- ▶ Follow our Land Use Twitter Account: @AncelGlinkLand
- ▶ Follow our Park & Rec Twitter Account: @AncelGlinkParks