COMMITTEE MEETING OF THE HOME RULE ATTORNEYS OF THE ILLINOIS MUNICIPAL LEAGUE HELD FRIDAY, OCTOBER 17, 2003 OAK BROOK BATH & TENNIS CLUB

A meeting of the Illinois Municipal League Committee of Home Rule Attorneys was held on Friday, October 17, 2003 at the Oak Brook Bath & Tennis Club in Oak Brook, Illinois. The following individuals were in attendance:

Rita E. Elsner, Chair	Schaumburg	relsner@ci.schaumburg.il.us
Richard J. Matuga	Burnham	rjmmat@aol.com
Vincent Cainkar	Bridgeview	vcainkar@aol.com
Patrick Oberle	Pekin	jpsjoberle@aol.com
Joseph Cainkar	Burbank	jcainkar@aol.com
Jim Powers	Seyfarth, Shaw	powerja@seyfarth.com
Joe Annunzio	Niles	jja@vniles.com
Richard Martens	Oak Park	martensatty@aol.com
Paul Keller	Glen Ellyn	pkeller@ancelglink.com
Dean Krone	Stone Park	dkrone@hlerk.com
Carlos S. Arevalo	West Dundee	carevalo@zrfmlaw.com
Beth Janicki Clark	Downers Grove	bclark@vil.downers-grove.il.us
Henry Mueller	Skokie	henry.mueller@skokie.org
Dan Blondin	Naperville	blondind@naperville.il.us
Randy Ray	Peoria	rray@ci.peoria.il.us
Dave Wiltse	Des Plaines	dwiltse@desplaines.org
Kurt P. Froehlich	Champaign	kpfefbps@shout.net
Dale Anderson	Lansing	Law50il@aol.com
Bob Becker	Fairview Heights	
Pat Lord	Naperville	lordp@naperville.il.us
Bernie Paul	Sandwich	bzpaul@aol.com
Tim Frenzer	Wilmette	frenzert@wilmette.com
John H. Brechin	West Dundee	brechinlaw@aol.com
Mary Jean Dolan	Chicago	mdolan@cityofchicago.org
Kathleen Elliott	Rockford	kathie.elliott@ci.rockford.il.us
Elena Penick	Schiller Park	epenick@rzltd.com
Mike Zimmermann	Schiller Park	mfzimm@rzltd.com
Thomas P. Bayer	Oak Lawn	tpbayer@ktjnet.com
Mike Jurusik	Maywood	mtjurusik@ktjnet.com
Roger Huebner	IML	rhuebner@iml.org

INTRODUCTION

Chairperson Rita Elsner called the meeting to order. As the first order of business, attendees introduced themselves.

APPROVAL OF MINUTES

- The minutes of the August 15, 2003 meeting were unanimously approved upon motion

made and voice vote.

SUBCOMMITTEE REPORT

The Public Safety Employees Benefit Task Force met at 9:00 a.m. to continue their work on drafting items to consider when granting a health insurance benefit to an injured (or killed) firefighter or policeman's claim.

The Task Force is reviewing several application documents to be filled out by the requesting party of the benefit. In addition, suggested procedures for processing the application are being drafted. The final area of work will be to examine the actual health insurance plans offered and what requirements will meet any statutory guidelines for basic group health insurance plans.

REQUESTS FOR INTERVENTION

- Mary Jean Dolan discussed Abrams v. City of Chicago a case involving a call to Chicago's emergency services for an ambulance transport. No ambulance was sent because the call was not an emergency. Plaintiff obtained a ride from a friend and was injured in an accident in which her unborn child died. The circuit court ruled that the failure to send an ambulance was not a proximate cause of the collision. The appellate court reversed, holding that it was reasonably foreseeable that the city's refusal to provide an ambulance might result in an accident.

The city of Chicago's Petition for Leave to Appeal was granted by the Illinois Supreme Court. A motion was made, seconded, and approved unanimously by voice vote for the Illinois Municipal League to intervene and file an amicus curiae brief.

- Roger Huebner discussed Paszowski v. Metropolitan Water Reclamation District of Greater Chicago a case involving a statute of limitations question arising out of an injury to a construction laborer while working on the district's deep tunnel project. The key issue is whether Section 8-101 of the Tort Immunity Act, which contains a one-year limitation period, or the Code of Civil Procedure Section 13-214, which contains a four-year period, applies in this action brought by plaintiff. The trial court applied the one-year limitation and dismissed the lawsuit. The appellate court reversed applying the four-year limitation stating it was more specific because it applied to "construction torts".

The MWRD's Petition for Leave to Appeal was granted by the Illlinois Supreme Court. A motion was made, seconded, and approved by voice vote for the Illinois Municipal League to participate by signing on to a joint amicus brief. (*Update: the City of Chicago has agreed to prepare and file an amicus brief in this case.*)

RECENT LITIGATION

Michael Jurusik reported on Rexroad v. City of Springfield, Illinois Supreme Court No. 94374 (August 21, 2003). A high school football team helper and his father brought a negligence action against the city and the board of education for injuries suffered following the helper's fall in the excavation area in the high school parking lot. The parking lot was located between the football practice field and the locker room, and the plaintiff was injured while walking through the parking lot to get to the locker room from the practice field. The defendants sought and the trial court granted

summary judgment concluding that the municipal defendants were not liable for the injuries because the parking lot was recreational property under Section 3-106 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act). The appellate court affirmed holding that the excavation area in the high school parking lot where the plaintiff was injured was recreational property because it increased the usefulness of the football practice field that is permitted to be used for recreational purposes. The plaintiffs appealed to the Illinois Supreme Court.

On appeal, the Supreme Court examined whether Section 3-106 of the Act was applicable to the school parking lot where the plaintiff was injured. The plaintiffs argued that the character of the property as a whole was educational, not recreational. The Supreme Court determined that the parking lot served the entire school, not just the recreational portion of the school. Thus, the Court held that the parking lot was not recreational property and summary judgment for the city was inappropriate. The Supreme Court further determined that the hole in the parking lot in which the plaintiff fell was not subject to the open and obvious doctrine because the plaintiff was sufficiently distracted to preclude summary judgment in this matter. Therefore, the Supreme Court reversed the judgments of the trial and appellate courts and remanded the case back to the trial court for further proceedings consistent with its opinion.

- Mary Jean Dolan reported on Civil Liberties for Urban Believers v. City of Chicago, No. 01-4030 (7th Cir. August 20, 2003). The plaintiffs, an association of Chicago-area churches and five individual member churches thereof, challenged the constitutionality of the city's zoning ordinance and challenged it under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The plaintiffs attempted to acquire property for their churches in various districts throughout the city where churches were required to acquire special use permits or rezoning of the property to operate the property as a church. However, their applications were denied and/or their attempts were thwarted by individual members of the city council. Ultimately, each church acquired suitable property for their churches in the district where all churches are allowed without special use permits or rezoning.

Subsequent to the plaintiffs' constitutional challenges, the city amended its ordinance to require all non-religious social uses to acquire a special use permit or rezoning to locate and operate in the designated zoning districts. In addition, the amendment exempted churches from the requirement that a special use applicant affirmatively demonstrate that the proposed use was necessary for the public convenience at the location, and provided that a special use permit would automatically issue in the event the zoning board of appeals failed to render a decision within 120 days of the date of the application.

The district court granted summary judgment to the city concluding that: (1) the amendment to the ordinance removed any potential substantial burden on religious exercise; (2) the zoning ordinance did not violate the equal protection clause because it was rationally related to a legitimate government purpose; (3) the ordinance did not violate due process because the legislative procedures and practices of the city council and the zoning board of appeals afforded the plaintiffs what minimal process that was due in zoning cases; and (4), the ordinance did not violate the First Amendment because its special use provisions were neutral and generally applicable which did not impermissibly burden the free exercise of religion, and the operation of a church is subject to zoning laws even where such operation involved conduct within the core of the First Amendment. Finally, the district court determined that the legislative actions of the individual council members were not unconstitutional because they afforded procedural due process, they were subject to neutral and

generally applicable ordinances, and were rationally related to the city's legitimate interests in developing the commercial areas adjacent to the relevant parcels while avoiding land-use conflicts. The plaintiffs appealed.

On appeal, the plaintiffs argued that the zoning ordinance violated RLUIPA's substantial burden and non-discrimination provisions. The substantial burden provision required land-use regulations that substantially burden religious exercise to be the least restrictive means of advancing a compelling government interest. The non-discrimination provision prohibited land-use regulations that either disfavor religious uses relative to non-religious uses or unreasonably excluded religious uses from a particular jurisdiction. However, the appeals court determined that the plaintiffs failed to demonstrate that the ordinance substantially burdened religious exercise, and the ordinance's amendments brought the ordinance into compliance with RLUIPA's non-discrimination provisions. Thus, the appeals court held that the city was entitled to summary judgment on the RLUIPA claims.

The appeals court then examined the constitutional issues that were raised. The appeals court determined that the ordinance did not lack facial neutrality because nothing in the record suggested, nor did the plaintiff articulate, that the object and purpose of the ordinance were anything other than those expressly stated. The appeals court also determined that the city could not be held liable for the actions of the individual council members because they were not final policy-making officials. The appeals court additionally determined that the ordinance's processes were generally applicable because they applied to everyone and were thus not discriminatory. The appeals court further determined that the ordinance did not violate the First Amendment because it was content-neutral, narrowly tailored to serve a legitimate governmental objective, and it left open ample alternative channels of communication. Furthermore, the ordinance did not violate the equal protection clause because the ordinance did not disfavor churches. Finally, the appeals court determined that the ordinance did not violate due process because it provided the plaintiffs with all the legislative process that was due. Therefore, the appeals court held that the city was entitled to summary judgment and affirmed the decision of the district court.

• Paul Keller reported on Lanning v. Harris, Third District Appellate Court No. 3-02-0637 (August 29, 2003). Plaintiffs sued defendants, a person leading officers in a high-speed pursuit and the city of Ottawa, after they were injured in an automobile collision with the defendant, Harris. The plaintiffs alleged that the city was negligent in its pursuit of the defendant. The city filed a motion to dismiss claiming that plaintiffs failed to allege that the city's conduct was willful and wanton as required by the Tort Immunity Act. The plaintiffs countered arguing that the appropriate standard of care in police chases is ordinary negligence. The trial court denied the city's motion and, pursuant to Supreme Court Rule 308, certified the following question for appeal:

Whether the proper standard of care in a case involving potential tort liability for a municipality arising out of a high-speed chase by a municipal police officer is the standard of reasonable care as outlined by Section 11-205(e) of the Illinois Vehicle Code or the standard of willful and wanton misconduct as outlined by Section 2-202 of the Tort Immunity Act.

The appellate court noted that the Illinois Vehicle Code allows police officers pursuing a suspect to disregard some traffic laws but police officers have the duty to drive with due regard for the safety of all persons using the highway. However, the Tort Immunity Act provides that a public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct. The appellate court believed that the

legislature made a rational choice to grant broader immunity to a public employee engaged in the execution or enforcement of the law than to a private employee/driver. Thus, the appellate court held that the standard in high-speed chases is willful and wanton misconduct as outlined by Section 2-202 of the Tort Immunity Act. Therefore, the appellate court determined that the Tort Immunity Act barred a cause of action against the city based on alleged ordinary negligence.

- John Brechin reported on Smith v. Power, No. 03-1811 (7th Cir. 2003). An assistant city attorney, who initiated proceedings to demolish a house on the plaintiffs' property allegedly in retaliation for the plaintiffs' criticism of the assistant city attorney when he was a city alderman, was entitled to absolute immunity in the plaintiffs' § 1983 civil rights suit because initiating the proceedings is "intimately associated" with the judicial process, and the attorney was acting within his authority pursuant to city ordinance.

- Rita Elsner reported on Hager v. II In One Contractors, Inc., First District Appellate Court No. 1-01-4222 (September 5, 2003). The plaintiff was an employee of a construction company that was subcontracted to help construct the new police headquarters for the city of Chicago. The plaintiff was injured on the jobsite which was controlled by the city through the auspices of the city's public building commission. One day short of the occurrence's two-year anniversary, the plaintiff filed a negligence action against the contractor, the city, and the commission. The city and the commission filed a motion to dismiss arguing that the plaintiff's action was time barred by the one-year statute of limitation pursuant to Section 8-101 of the Tort Immunity Act. Following the appellate court's decision in Greb v. Forest Preserve Dist. Of Cook County, 323 Ill. App. 3d 461 (1st Dist. 2001), the trial court agreed and dismissed the plaintiff's suit. The plaintiff appealed.

On appeal, the plaintiff argued that the trial court erred in granting the motion to dismiss because the four-year statute of limitations in Section 13-214 of the Code of Civil Procedure governed this action. In examining the nature of the action, as opposed to the nature of the defendant, and its decision in Paszowski v. Metropolitan Water Reclamation District of Greater Chicago, First District Appellate Court No. 1-01-4419 (April 21, 2003), the appellate court noted that the decision in Greb was misplaced because Section 13-214 of the Code was clearly more specific because it applied to "construction torts" while Section 8-101 of the Act applied to any tort action. Therefore, the appellate court determined that the statute of limitations provided in 13-214 of the Code applied in this matter. Thus, the appellate court reversed the decision of the trial court and remanded the cause for further proceedings.

OLD BUSINESS

- Dave Wiltse updated everyone on the MWRD litigation involving connection fees for TIF districts. Discovery is ongoing with hundreds of boxes of documents being reviewed.

- PrimeCo. case – A general discussion occurred regarding the litigation involving the IMF and class action status was reviewed. Jack Siegel is discussing the matter with the NWMC cities on Monday.

- Henry Mueller discussed the Ozik case involving Skokie and liability for a traffic accident. The appellate court granted leave for an intervention by the Illinois Association of Defense Trial Counsel and at the same time denied a petition for rehearing. In addition, the court withdrew its opinion and will issue a new one.

NEW BUSINESS

- Vince Cainkar discussed the issue of nursing homes and serving younger patients who have some type of substance/mental illness problem.

- Michael Jurusik postponed discussed on HB 625 (P.A. 93-0595/Affordable Housing Planning & Appeal Act) until next meeting. (*Copies of P.A. 93-0595, e-mail inquiry from Mike Jurusik, and e-mail inquiry from Jason Bielawski all attached.*)

- Beth Janicki Clark asked how municipalities were complying with P.A. 93-0592 which requires that any complaint filed against a sworn peace officer must be accompanied by a sworn affidavit. Rita Elsner stated that this Public Act was an effort to assist the city of Chicago in dealing with situations where numerous anonymous complaints were being phoned in against police officers. Rita had researched the issue and her opinion is that if the complaint alleges an infraction that would require greater than three days' suspension, then it becomes more formal and the affidavit is required. The law itself is not quite as clear and seems to require that any "complaint" against a sworn peace officer must be accompanied by a verified affidavit. It is unclear in that a complaint itself could be a formal document or a much more informal situation such as an anonymous call-in complaint from a citizen. Rita has some materials that Schaumburg has implemented which she will share with the group.

- Roger Huebner asked, on behalf of Oak Brook Terrace, whether any municipalities applied a tax on electricity used by Commonwealth Edison. No one did. Does home rule power allow for such tax? No one thought so. If a lawsuit were filed, would anyone be interested in joining the litigation? No one responded.

NEXT MEETING

The next meeting of the IML Home Rule Attorneys Committee will be held on Friday, November 14, 2003 at the Oak Brook Bath and Tennis Club in Oak Brook, Illinois.

MEETING SCHEDULE FOR 2003

November 14, 2003 Oak Brook Bath & Tennis Club (*New Date!*)

December 5, 2003 Gioco (in Downtown Chicago)

ADJOURNMENT

There being no further business, the meeting was adjourned upon motion made and voice vote.