

THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

IASA/HLERK Regional Conferences Coming Up!

Save the date for the upcoming *Recent Developments in Illinois School Law 2006* conference nearest you. As previously announced, the [Illinois Association of School Administrators](#) is again joining HLERK in sponsoring the 2006 Regional Conferences.

Leading topics will include new school finance legislation, new TRS legislation, amendments to the *Open Meetings Act* and the final IDEA regulations from Washington.

Dates and locations are as follows:

- 10/12- Collinsville (Holiday Inn)
- 10/19- Oak Brook (The Lodge at McDonald's Headquarters)
- 10/26- Peoria (Weaver Ridge)

Please contact Kathy Nelson with IASA at 217-787-9306, or Lindsay Dreyfus at HLERK, with questions. Registration forms will be available soon.

New Changes Expected to *Illinois Open Meetings Act* Regarding Meetings by "Electronic Means"

Awaiting the Governor's signature, Illinois [Senate Bill 585](#) would amend the *Illinois Open Meetings Act* by changing the definition of "meeting" to include any gathering that is in person or by video or audio conference, telephone call, electronic means (such as e-mail, chat rooms, or instant messaging) or "other means of contemporaneous interactive communication" of a majority of a quorum of the members of the public body held for the purpose of discussing public business.

Under the bill, a quorum of members must be physically present at the location of open and closed meetings of boards of education. The bill does permit members not physically present to participate in a meeting through a video or audio conference when a majority of a quorum is physically present. However, such participation is limited to situations when a member is prevented from attending due to personal illness, disability, employment purposes, the business of the board, or a family or other emergency. Moreover, such members can only attend meetings by video or audio conference to the extent allowed by rules adopted by the board.

The bill also provides that members wishing to attend a meeting by video or audio conference must notify the recording secretary of the board before the meeting unless such notice is impractical. Similarly, Board minutes must document non-physically present attendees.

The new legislation raises a variety of complex issues for administrators. We will keep you apprised of its status. Contact Heather Brickman with your OMA inquiries.

Closed Session Tape of Board Meeting Ordered Disclosed in Lawsuit

In *Kodish v. Oakbrook Terrace Fire Protection District*, 235 F.R.D. 447 (N.D. Ill. 2006), the Northern District of Illinois ordered the Fire Protection District Board to turn over certain portions of its closed session audiotapes that contained discussions regarding a terminated employee. During the closed session, the Board members and the Board's attorney discussed the termination of the employee. The employee then sued the district for wrongful termination on a federal claim and sought to discover the audiotapes from the district.

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Consumer Price Index

Percent change for the month of **June, 2006**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	0.3	0.2
12 Mth	2.6	2.8
St. Louis-6 Mth	0.7	0.8
12 Mth	2.1	2.3
U.S. Mthly	0.2	0.2
12 Mth	4.3	4.5

July CPI figures will be released August 16, 2006. Visit the most recent CPI at our website, [www.hlerk.com](#)

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Reminders/Notes

- Reserve the date for the October IASA/HLERK Regional Conferences on *Recent Developments in Illinois School Law 2006* nearest you (See article, above).
- Remember that federal law requires Illinois school districts to conduct educational programs relating to the U.S. Constitution during the week prior to or after September 17 in honor of the Constitution's birthday.
- HLERK will be sponsoring its annual *Rush Hour Social* at the [Illinois Alliance of Administrators of Special Education's Fall Conference](#) at the Holiday Inn in Tinley Park on September 28th. Please join us at the Social Hour and say hello! It is our privilege to serve as IAASE's legal counsel.

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Appellate Court Rules that “Network Manager” Job Position is Excluded from Bargaining Unit

In a case successfully argued by HLERK attorneys **Terry Hodges, Nancy Krent and Barbara Erickson**, the Illinois Appellate Court recently held that a newly established “network manager” position should be excluded from a collective bargaining unit as a “confidential employee.”

In [Support Council of District 39, Wilmette Local 1274 v. Educational Labor Relations Board and Wilmette School District No. 39](#), the primary function of the newly-created position was to manage the design, installation, configuration, and maintenance of district-wide computer systems. The Union sought to include the position in the collective bargaining unit, and filed a unit clarification petition with the IELRB.

The district opposed the petition because the regular duties of the position might bring an employee into contact with confidential bargaining information in the course of maintaining the district’s computer network and recovering lost or corrupted files.

The Executive Director of the IELRB denied the petition, finding the employee to be confidential because “there is evidence that the Network Manager will have actual access to confidential collective bargaining information in the regular course of his duties.” The IELRB adopted the decision and the Union appealed.

In upholding the IELRB’s decision, the Appellate Court found that the Network Manager “sees, manipulates, reads, and develops reports from all data on all district computers, including confidential material pertaining to labor relations.”

The court noted that “the exclusion of the Network Manager from the bargaining unit as a confidential employee achieves the objective long supported by the courts” – namely, that “management should not be required to handle labor relations matters through employees in a union who, in the normal performance of their duties, may obtain advance information of the company’s position with regard to contract negotiations, the disposition of grievances, and other labor relations matters.”

Accordingly, the court found that the employee was a “confidential” employee under both the “labor-nexus” test and the “authorized access” test.

This ruling represents an important victory for school districts. The law in this area is rapidly changing as school districts, unions, the IELRB, and the courts are grappling with the implications of providing employees with broad access to computer networked information.

Please contact Terry Hodges or Mike Loizzi with questions about this latest decision or with other questions about confidential employees or other labor relations issues in your district.

Appellate Court to Review Tort Immunity Fund Case

In an unusual development, the Illinois Appellate Court has agreed to review a trial court’s findings in *In re: Objections of Tax Levies of Freeport School District et al.*, a lawsuit filed by taxpayers challenging taxing bodies’ use of their Tort Immunity levy authority.

As reported in HLERK’s October 2005 newsletter, the trial court of Stephenson County ruled last year that local school, park, and community college districts had exceeded their authority by levying Tort Immunity taxes improperly to fund wages and salaries of personnel, a race relations program, and other unauthorized expenses.

As a result, the local taxing districts were ordered to pay substantial refunds to over 2,000 taxpayers who had joined the lawsuit, the amounts of which were to be determined in further proceedings. To avoid the time and expense of having to go through refund proceedings twice in the event of an erroneous decision, the parties sought an immediate appeal of the trial court’s decision.

On May 24, 2006, the Second District Appellate Court of Illinois accepted the parties’ request to review the case. The appellate court’s decision is expected sometime in 2007. Once the appellate court reaches a decision, the parties may seek to appeal the case to the Illinois Supreme Court.

We will keep you apprised of the status of this important litigation.

For questions concerning your tort levy issues or regarding the above litigation contact Heather Brickman or Stan Eisenhammer.

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Closed Session Tape cont.

The Board contended that it did not have to turn over the audiotapes based on both the attorney-client privilege and a provision of the *Illinois Open Meetings Act* (“OMA”) that exempts the release in litigation of certain closed session minutes.

The court refused to apply the state privilege provided under the OMA because the employee’s claim was federal, and federal law does not recognize such a privilege. Furthermore, the court refused to recognize a new federal law privilege based on the OMA because the employee’s need to find out the truth outweighed the privacy interest ad-

vanced by the OMA privilege.

The court also ruled that the attorney-client privilege only applied to those portions of the closed session during which the Board’s attorney actually gave legal advice, or when the Board members discussed the attorney’s legal advice.

The Board was still compelled by the court to release those portions of the audiotapes that pertained to factual information about the employee, such as why the Board terminated the employee.

Please contact Heather Brickman or Nancy Krent to discuss the impact of this ruling.

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