



New Law Extends Period for Issuance of Bonds After Referendum During Lawsuit

The *Local Government Debt Reform Act* provides that whenever bonds are required to be authorized by a referendum or backdoor referendum, the approval, once obtained, remains in effect for five (5) years after the date of the referendum or three (3) years after the end of the petition period for a backdoor referendum.

[Public Act 96-0826](#) (eff. Nov. 25, 2009) adds an exception to this provision so that whenever bonds are not issued because of a court action, the five-year and three-year periods are “tolled” (*i.e.* stopped) during ongoing court proceedings. This excep-

tion will prevent the expiration of bond authority during drawn-out legal battles challenging either a bond issue itself or other action related to an issue or its underlying project.

The law was intended to address a situation in which the Village of Rockton had secured referendum approval for bonds in 2005 but could not issue the bonds due to a pending court case challenging the validity of the referendum.

Please contact Heather Brickman or Steve Richart for further information.

Illinois Appellate Court Finds Audio/Visual Recording of Special Education Classrooms By School District Would Violate Illinois Law--The Second District Appellate Court of Illinois, governing all Illinois school districts, has prevented a district from installing and operating audio and video equipment in certain special education classrooms, finding that the proposed policy would violate the *Illinois Eavesdropping Act*.

In *Plock v. Board of Education of Freeport School District No. 145*, 2009 WL 4757384 (2009), the district proposed the surveillance policy following allegations of student abuse and the subsequent resignations of a teacher and classroom aide. The parents of special education students requested audio and video recording to prevent future abuse in the classroom.

Special education teachers employed by the district sued in state court alleging that the audio recordings would violate their fourth amendment federal constitutional right to be free from unreasonable search and seizures and violate the *Eavesdropping Act*.

A federal trial court found that the proposed policy would not violate the Fourth Amendment and sent the case back to state court to rule on the *Eavesdropping Act* claim.

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Consumer Price Index

Percent change for the month of **November, 2009**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly 12 Mth	0.2 1.5	0.3 1.5
St. Louis-6 Mth 12 Mth	-0.9 -0.5	-1.3 -1.0
U.S. Mthly 12 Mth	0.1 1.8	0.2 2.3

December CPI figures will be released January 18, 2009. For the most recent CPI, visit our website at: www.hlerk.com

The Extra Mile is intended solely to provide information to the school community. It is neither legal advice nor a substitute for legal counsel. The Extra Mile is intended as advertising but not as a solicitation of an attorney/client relationship.

Reminders & Notes

- **Bennett Rodick** will deliver the keynote address at IAASE's Winter Conference in Springfield on January 21st; **Nancy Krent** will address the national LRP School Attorneys Conference in Savannah, GA the 26th; and **Mike Loizzi** and **Cindi DeCola** will address the IASPA Conference on the 29th.
- HLERK has developed a model policy and administrative procedures to assist you in implementing the newly revised *Freedom of Information Act*. You may purchase a copy by sending in the attached order form. Please contact **Rob Swain** or **Heather Brickman** with inquiries.

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Federal Appellate Court for Illinois Expands ADA Rights of School Employees--The Seventh Circuit Court of Appeals (governing all Illinois school districts) recently held in favor of a teacher who alleged that the school district failed to accommodate her "seasonal affective disorder" (a form of depression affected by a lack of natural light) and constructively discharged her in violation of the *Americans with Disabilities Act* ("ADA").

In *Ekstrand v. School District of Somerset*, the Seventh Circuit Court of Appeals affirmed the lower court's ruling in favor of the school district on the constructive discharge claim but reversed the trial court's decision to grant summary judgment to the school district on the failure to accommodate claim.

The district was aware of Ekstrand's qualifying disability and, short of granting her request to be relocated

to a classroom with windows, had taken several steps to accommodate her. But Ekstrand had never provided the school district with evidence, other than her own conclusory remarks, that natural light was necessary to accommodate her. Eventually, Ekstrand informed the school district, through her psychologist, that natural light was the key to her improvement.

The court found that once the school district became aware of natural light's medical necessity to Ekstrand, and having been informed by Ekstrand that she was able to work in a classroom with natural light, the school district was obligated to provide Ekstrand's specifically requested, medically necessary accommodation (*i.e.* a classroom with windows) unless it "would impose an undue hardship" on the school district.

Contact Ellen Rothenberg or Bennett Rodick with your ADA inquiries.

Audio/Visual Recording Cont. The Appellate Court found that the plain language of the statute applied to the policy. The Act provides that a person commits eavesdropping when he knowingly or intentionally uses an eavesdropping device for the purpose of hearing or recording all or part of any conversation, or "intercepts, retains, or transcribes electronic communication" without the consent of all of the parties of the conversation or electronic communication. [720 ILCS 5/14-2\(a\)\(1\)](#).

The Appellate Court found that teaching occurring in the classroom constitutes a "conversation" under the Act, regardless of whether the conversation is intended to be private. (The Court, however, rejected the district's reliance on *DeBoer v. Village of Oak Park*, 90 F.Supp.2d 922 (N.D. Ill. 1999), in which the court held that the Act did not apply to public speeches.) The district argued that such speech-like communication was similar to that which would occur when a professor delivers a lecture to a large audience.

The court found, however, that exchanges at lower levels of education were better characterized as "ongoing oral exchanges between teachers and students," and were thus easily distinguishable from the public speech

setting. The fact that the Act included an exclusion for recordings on school buses supported its determination, because the legislature had the power, but chose not to similarly exempt conversations in classrooms.

The court also stated that the plain meaning of the Act applies to conversations, regardless of whether there is a subjective or objective expectation of privacy. The court further rejected the district's public policy argument, finding that audio and video recording was not the only means of protecting teachers and students.

Finally, the court found that, although implied consent can apply to the Act, the employer could not compel its employees to relinquish their statutory rights. Instead, relinquishment requires a knowing and voluntary waiver. The court found waiver could not be inferred in this case because there was a direct statement opposing the proposed policy.

The Appellate Court's decision in Plock raises a host of issues regarding tape recording in the school context. Bennett Rodick will discuss the implications of Plock at his keynote address at the winter meeting of the Illinois Alliance of Administrators of Special Education.

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