

THE
Extra Mile
GOING THE EXTRA MILE SO YOU DON'T HAVE TO

Email/Text Messages from Personal Phones Accessible Under FOIA--A trial court in Springfield recently upheld the Attorney General's binding opinion that the City of Champaign should turn over to the *News Gazette* any emails and text messages sent by individual City Council members during meetings, including those sent and received on their private cell phones and other devices.

The *News Gazette* had argued that council members' electronic communications during meetings constitute deliberation and thus are subject to disclosure under the *Freedom of Information Act*. The Attorney Gen-

eral had ruled, and on June 11 the trial court judge concurred, that *emails and texts to and from individual board members on the topic of public business may be accessible under FOIA even if sent from personal phones and devices and not received by the public entity*.

The Attorney General has long held the position that emails regarding public business sent by board members, even from their personal devices and personal email accounts, may be accessible under the *Freedom of Information Act* as "public records" if the email process is used to circumvent FOIA, and the Attorney General has applied this concept in

Continued on Page 2

Illinois State Board of Education Votes to Permit Only Certified School Nurses to Make Decisions Based on Medical Reviews--On June 21, 2012, the Illinois State Board of Education ("ISBE") voted to adopt an amendment to Section 226.840 of its special education regulations, to allow only certified school nurses to make recommendations regarding educational interventions, accommodations, or modifications based on the findings of a student's medical review. This amendment reverses prior language which authorized RN's and advanced practice nurses to make such recommendations.

ISBE voted to adopt this amendment partly in response to complaints by the Illinois Association of School Nurses that registered nurses and advanced practice nurses do not have the specialized training necessary to make medical review decisions, which requires knowledge on how to accommodate special education students in the least restrictive environment.

In adopting the amendment, ISBE explained that it sought to reach a middle ground, by still permitting licensed physicians, registered nurses, and advanced practice nurses to conduct medical reviews, but limiting the decision-making to more qualified certified school nurses.

Continued on Page 2

Consumer Price Index

Percent change for the month of **May 2012**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago Mthly	-0.1	-0.2
12 Mth	1.0	0.7
St. Louis, 2nd Half		
6 Mth	1.1	1.1
12 Mth	3.1	3.6
U.S. Mthly	-0.1	-0.2
12 Mth	1.7	1.6

June CPI figures will be released July 14, 2012. 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

- Please send in the attached form (also at www.hlerk.com) to receive the electronic edition of the *Extra Mile*. Please also let us know if your email address has changed for the upcoming school year.
- Join **Bennett Rodick** and **Michelle Todd** at the IAASE Executive Board meeting in Springfield on Wednesday, July 18th, the day prior to the ISBE Special Education Directors' Conference.
- HLERK is pleased to sponsor and present at the Lake County Superintendents' Leadership Conference on September 30-October 2 in Galena. Visit www.lcsupts.org for information and registration.

Offices

Arlington Hts. 847-670-9000
Belleville 618-355-7850
Peoria 309-671-9000

Nurses Cont. ISBE explained that the rule's sole focus is on who is qualified to conduct medical reviews "for the purpose of evaluating or re-evaluating students for special education and related services."

Note that while this amendment does not change who can conduct a medical review, it does limit who is authorized to make recommendations regarding educational interventions, accommodations, or modifications based on the findings of the medical review to certified school nurses only. Although ISBE has

adopted the amendment, this recommendation is awaiting review by the Joint Committee on Administrative Rules ("JCAR") and, therefore, is not yet in effect. If JCAR approves ISBE's proposed amendment, the amendment is currently set to go into effect on July 1, 2013.

For more information about how this amendment will affect your school district, please contact Laura Pavlik or Bennett Rodick.

Personal Phone Cont. situations in which such emails have come into possession of the public entity, such as by sending to or copying a recipient on a district email account. (See 2007 OMA 0009).

In this case, the Attorney General took the broader position that emails between board members do not need to be in possession of a public body at all in order to be accessible under FOIA; rather, they simply need to have been "prepared by or used by a member of the public body in conducting the affairs of government," regardless of how that record was created, pos-

sessed, or transmitted. Although this case may be appealed, unless and until an appellate court ruling to the contrary is issued, it serves to put local elected officials, including school board members, on notice that their electronic communications will be under a higher level of scrutiny.

Please follow the Extra Mile for updates on this litigation. Please contact Heather Brickman or Bob Kohn with your FOIA or Open Meetings Act inquiries.

Seventh Circuit Blocks Enforcement of Illinois Eavesdropping Law--In a test case brought by the American Civil Liberties Union, a three-judge panel of the Seventh Circuit Court of Appeals issued a preliminary injunction against the Cook County State's Attorney on May 8, 2012, which prohibits them from enforcing the *Illinois Eavesdropping Act* against individuals who record police officers performing their duties in public.

Illinois has one of the toughest eavesdropping statutes in the country. The law makes it a felony to record "all or any part of a conversation" unless *all* parties to the conversation give their consent.

The Illinois law also applies regardless of whether the parties intended the conversation to be private,

whereas most states require that the parties had some expectation of privacy. Additionally, a person who records police officers performing their official duties can be charged with a Class 1 felony and face anywhere from four to fifteen years in prison.

The court determined that the ACLU was likely to succeed on the merits of its claim and issued a preliminary injunction that bars the State's Attorney from enforcing the law while the case is pending before the district court for a decision on the merits of the ACLU's complaint.

Recording and videotaping issues commonly arise in school districts and the eavesdropping statute is commonly implicated. Contact Nancy Krent or Bennett Rodick with your inquiries.

CONTACT US:
info@hlerk.com

3030 Salt Creek Lane . Suite 202 . Arlington Heights, Illinois 60005
23 Public Square . Suite 260 . Belleville, Illinois 62220
401 SW Water Street . Suite 106 . Peoria, Illinois 61602