

Navigating Revenue Issues and Protecting Your Tax Base

Annual Legal Update for Illinois
Colleges Virtual Conference

September 17, 2021

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Navigating Revenue Issues and Protecting Your Tax Base

Presented by: Scott L. Ginsburg and M. Neal Smith
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Navigating Revenue Issues and Protecting Your Tax Base

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Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

Real Estate Update

- Residential Real Estate values increasing due to low mortgage rates, suburban flight and low supply.
- Covid impact on commercial values unclear – Watching sales data come in slowly.
- Investors are preparing for a less “in person” world.
- Industrial real estate boom continues.
- Travel and entertainment taxpayers are holding properties in anticipation of a strong comeback.

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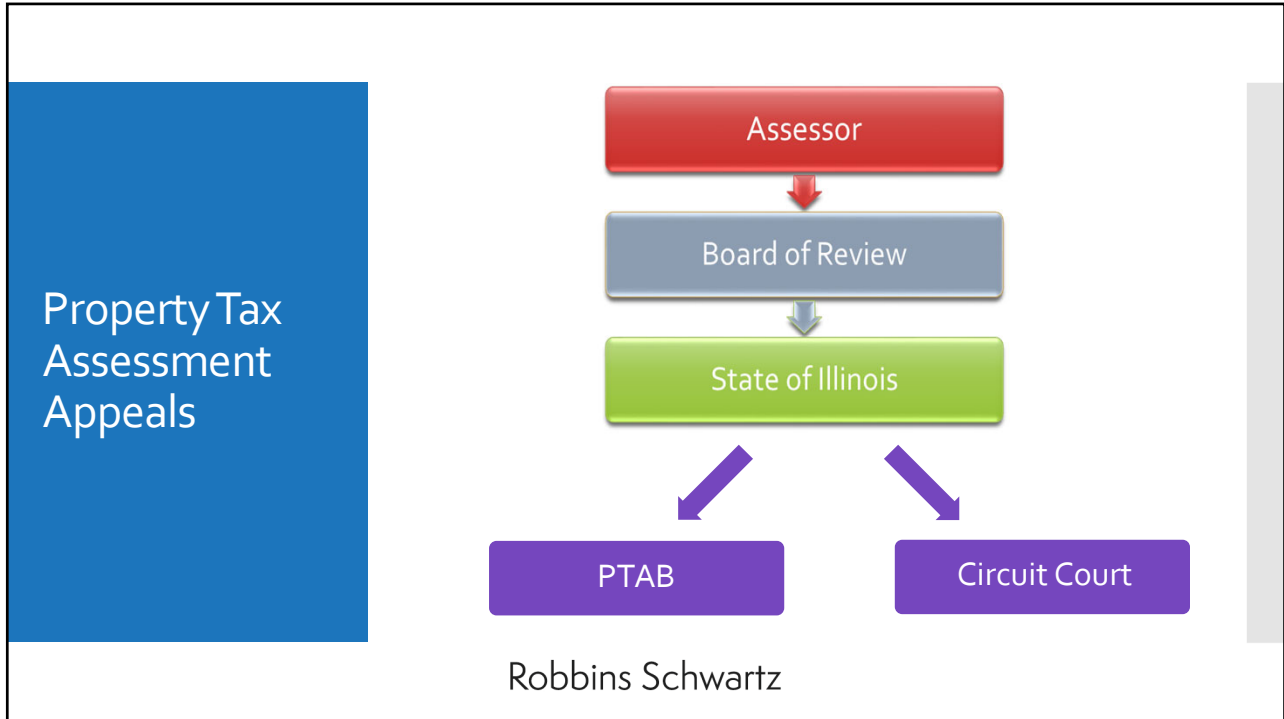
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COVID / Catastrophic Event Adjustment

- Reassessment in Disaster Areas – 35 ILCS 200/13-5
 - Area declared a major disaster area by President or Governor of IL
 - Upon application by property owner, reassess taxable property which was substantially damaged by the disaster
 - Value determined as of the date of declaration of the county as a major disaster area

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Protecting the Tax Base by Defending Assessments

- Defending the assessments of the highest valued properties prevents a cascading depreciation of lower valued properties

<p>with intervention</p>	<p>Final Assessment</p> <ul style="list-style-type: none"> - Class A valued at \$95/sf - Class B valued at \$85/sf - Class C valued at \$65/sf 	
<p>without intervention</p>	<p>Final Assessment</p> <ul style="list-style-type: none"> - Class A valued at \$75/sf - Class B valued at \$55/sf - Class C valued at \$35/sf 	

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College Intervention in Assessment Appeals

Taxing District intervention in assessment process is anticipated and supported by the Supreme Court, the Property Tax Code and the PTAB's Rules

- ___ Get to the Reasonable Value
- ___ Settle Property Tax Appeal Board ("PTAB") Appeals
- ___ Minimize Refunds
- ___ Long-Term Settlement

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Refund Recapture – P.A. 102-0519

- PTAB and Circuit Court Assessment Objections and Certificates of Error.
- Annual Refunds Automatically Added to Levy.
- Excluded from next year's aggregate extension base.
- Tax-Capped Counties Only

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Proposed Replacement – HB 4130

- Repeals P.A. 102-0519
- Taxing District Option: Requires Additional Levy.
- Abatement for Taxpayers receiving refunds
- Applies to all taxing districts

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Framed as Tax Increase

Bill could set up wave of property tax hikes

Legislation headed to Pritzker addresses over-assessment errors

By Rick Pearson
Chicago Tribune

Legislation headed to Gov. J.B. Pritzker's desk could set the stage for a wave of annual real estate tax increases across Illinois by giving local taxing bodies the ability to make up for refunds they've issued due to erroneous prop-

erty over-assessments by shifting those costs onto the rest of their taxpayers.

In Cook County alone, refunds issued by local taxing bodies during the 2020 calendar year in categories covered by the legislation total \$176.3 million – an amount roughly in line with annual refunds issued since 2015, based on statistics obtained through a Freedom of Information Act request from the county treasurer's office.

Under the measure, starting

with next year's property tax bills, a taxing district levy shall be increased to reflect refunds through rulings of the Property Tax Appeals Board, a court-ordered assessment correction or a certificate of error. Because such appeals can often take years, and due to annual assessment errors, the recapture provision means likely annual future increases in property tax bills regardless of current limits in state law.

Turn to Legislation, Page 2

Legislation

The legislation points to the power of the education lobby in Springfield, from local school districts and administrators to teachers' unions, and Illinois' overly dependent system of funding schools at the local level through property taxes rather than through state funding. Property taxes for schools additionally make up the biggest line item on real estate tax bills and propo-



The Illinois State Capitol on Jan. 13 in Springfield. BRIAN CASSELLA/CHICAGO TRIBUNE


erty assessment." DeWine said he believed the legislation would put more pressure on assessors to deliver more accurate assessments to avoid constant property tax increases driven by mistaken calculations. "That definitely was one of the byproducts of this legislation," he said. Fritz Kaegi's office said he took no position on the bill when it was being considered in the General Assembly and had no comment on its passage – though the



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TIF Basics and Strategy




back
to the
basics

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TIF Overview

- Tax Increment Financing ("TIF") was adopted in Illinois in 1977
- Intent of TIF is to be a tool for municipalities to spur economic development in a defined area that is blighted or deteriorating
- To do this, municipalities create a TIF district where the EAV of the property in the district is set at a base amount at the time of TIF district formation (sometimes people say the EAV is "frozen")



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TIF Overview

- The tax increment is the difference between the amount of property tax revenue generated before the TIF district was established and the amount of property tax after TIF district establishment
- Put another way, the tax increment is the difference between the property taxes generated on the base/frozen EAV and the property taxes generated on the actual current EAV
- The tax increment is not distributed to taxing districts but instead goes to a fund controlled by the municipality and used for economic development in the TIF district

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TIF Overview

Figure 1: Allocation of equalized assessed value within a TIF district

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TIF Overview

- TIF works as an economic development tool because money that would go to other taxing districts is instead made available to the municipality for economic development spending
 - The statutory max life of a TIF district is 23 years, but a TIF district's life can be extended another 12 years by specific legislation
- 23 years 
- At the end of the TIF district, the entire EAV of the property is available to all taxing districts

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TIF Eligibility

- Key requirement for all TIF districts: municipality must find that development or redevelopment of the proposed area would not occur **"but for"** the creation of a TIF district

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TIF Eligibility

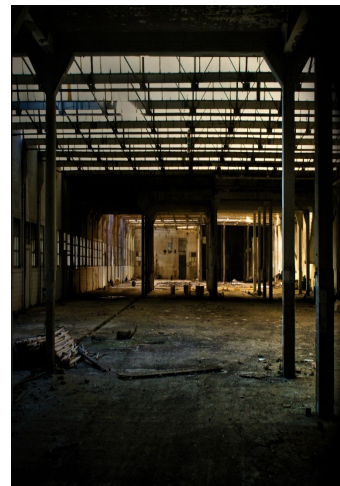
- To determine eligibility factors, look at what kind of area is proposed as a TIF district:
 - Blighted Area
 - Conservation Area
 - Industrial Park Conservation Area
 - Intermodal Transportation Facilities

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TIF Eligibility

- **Blighted Area:** At least 5 factors present from a menu of blighting factors:
 - dilapidation,
 - obsolescence,
 - deterioration,
 - structures below code,
 - illegal use of structures,
 - excessive vacancies,
 - lack of ventilation, light or sanitary facilities,
 - inadequate utilities,
 - overcrowding,
 - deleterious land use or layout,
 - environmental issues,
 - lack of community planning, and
 - declining EAV for 3 of last 5 years



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TIF Eligibility

- **Conservation Area:** this is a more subjective determination and means any improved area in which 50% or more of the structures in the area have an age of 35 years or more. Such an area is not yet a blighted (i.e. does not meet criteria in previous slide) but because of a combination of 3 or more of listed factors the area is “detrimental to the public safety, health, morals or welfare and such an area may become a blighted area”

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TIF Eligibility

- **Industrial Park Conservation Area**
- **Intermodal Transportation Facilities**

Both of these have very specific criteria that are limited to narrow scenarios.



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TIF Formation

- Municipalities setting up a TIF district go through these steps:



- Identify TIF district boundaries
- Hire a TIF consultant to prepare eligibility study
- Create interested parties registry
- Hold public informational meeting
- Send eligibility report to all affected taxing districts

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TIF Formation



- Schedule, send notice, and hold a Joint Review Board (JRB) meeting
- JRB issues recommendation
- Give required notice of public hearing
- Public hearing by the corporate authorities of municipality
- Passage of ordinance adopting TIF district
- Where the JRB recommends against the TIF district, the municipality must approve TIF district with a 3/5 vote.

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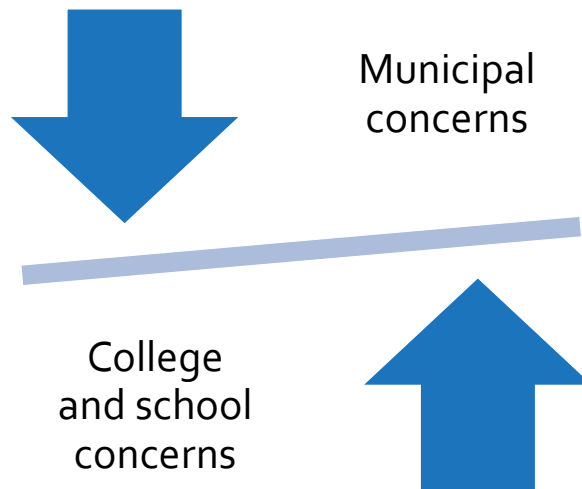
Problems with TIF

- Redevelopment is important, but the interests of municipalities and taxing districts are not completely aligned
- TIF creates a fund controlled solely by the municipality, so TIF is politically popular among municipal decisionmakers who can allocate dollars for community enhancement while still saying “this is not a tax or tax increase”
- Because TIF is politically popular it is susceptible to overuse and abuse

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Problems with TIF



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Problems with TIF

- Since property taxes on EAV above the frozen base EAV go into the TIF fund, if new construction and new growth would have occurred even without establishing the TIF district, then taxing bodies have lost property tax revenue they would have received if the TIF district had never been established. (tax capped counties)

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Problems with TIF



- In counties where taxing district is not limited by the tax cap, taxing district could still be limited by the max statutory rate for some of its funds. The TIF district lowers the available EAV and thereby raises the tax rate. If a taxing district is close to a max rate in any fund, the TIF could prevent a district from collecting all of the tax revenue it would collect otherwise

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Problems with TIF

- TIF can be a hidden tax hike: all taxpayers pay more to make up for the property taxes that would have been received by the taxing district from EAV that would have gone up anyway

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Problems with TIF

- The decision about whether an area qualifies to be a TIF district is not made by an impartial decisionmaker
- When a TIF district is challenged in court, the decision is not reviewed "de novo" and judges give deference to the municipal board decision

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Tips and Strategies for when a TIF is proposed



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Tips and Strategies

- Communicate with the municipality early and often about impacts on the taxing district and ways to address impacts
- Attend every public hearing and be vocal
- Request meetings with municipal staff, consultants and elected officials

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Tips and Strategies

- Be very involved in the Joint Review Board (JRB)
- Don't let the JRB become a rubber stamp for the municipality
- But also remember that the JRB cannot stop a TIF



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Tips and Strategies

- TIFs are political, so treat the process that way: be vocal and engage the media, students, parents, and voters about the impacts of TIF
- Make it politically costly for the municipality to ignore the interests of the school or college

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Tips and Strategies

- Understand the geography and the facts on the ground. Why has a certain area been proposed? Why have some parcels been included and other excluded from the TIF?



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Tips and Strategies

- Work to negotiate an IGA
- There is usually a compromise to be had: taxing bodies understand that redevelopment is important, and municipalities want strong educational institutions in the community

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Tips and Strategies

- It may be a good negotiation strategy to convey a credible threat of litigation, especially conveying this message through the taxing district's attorney
- And it may be necessary to litigate, especially if municipality has taken a hardline stance against an IGA
- Hire a TIF consultant/expert witness



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Tips and Strategies

- Hire a TIF consultant/expert witness
 - This conveys a serious approach and readiness for litigation
 - The municipality will have been utilizing a TIF consultant from the beginning, so another consultant's perspective can create competing ideas and magnify the need for a negotiated IGA

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Conclusion

- Taxing bodies, and especially schools and colleges can and should be major players in the TIF process
- Influencing the process and getting the best possible IGA depends on being proactive with the municipality

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TIF Questions?



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Tax Rate Objections

- A would-be objector must
 - pay its entire tax bill within 60 days after the 1st penalty date for the final installment of taxes for that year, and
 - file its objection complaint within 75 days after the 1st penalty date for the final installment – typically, in October or early November, in counties other than Cook.

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Defending or otherwise resolving tax objections

- Recommended first steps:
 - When you receive notice that objections have been filed to one or more of your district's tax levies, forward copies of the objections to district legal counsel to review and assist you in evaluating strategic options.
 - Factors to be considered include the legal merit or lack of merit of the objections, as well as the total estimated amount of the objectors' refund claim for each objection.
 - The total refund claim amount for any objection will be equal to the aggregate EAV of the taxpayers who have filed the objection, multiplied by the tax rate complained of cited in the objection.

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Common objections – “excessive accumulation”



- Doing the *CIPS v. Miller* math:
 - Compute “available assets” of the fund, by adding together the fund balance at the end of the FY preceding the challenged tax levy, plus prior year taxes still to be received.
 - Compute the fund’s average annual expenditure for the three FYs preceding the levy.
 - Divide available assets by three-year average annual expenditure. If the resulting “funds/average expenditure” ratio is > 2.0, objector may have a prima facie case.

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Common fund-related objections to College levies:

Excessive Accumulations

- Excessive accumulation objections
 - Typically assert that the challenged levy resulted in an excess accumulation of assets in the levied-for fund because, at the time the levy was made, the fund’s available assets exceeded two times its average annual expenditure.
 - Excess accumulation claims are analyzed according to the guidelines set out in *Central Illinois Public Service Co. v. Miller*, 42 Ill.2d 542, 248 N.E.2d 89 (1969) (“*CIPS v. Miller*”).
 - If available assets of that magnitude are shown, the taxing body can defeat the objection by presenting credible evidence as to why it needed to make an additional levy.

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Common fund-related objections to Taxing District levies:

Improper Expenditures of "Tort" funds

- Allege that taxing district financial records show that it made "improper expenditures" from proceeds of levies for tort/liability insurance purposes, and that the tort levy should be reduced by the amount by which the fund would be replenished if reimbursed for the alleged wrongful "diversions of assets".
- To support plaintiffs' allegations, the text of these objections often cite budget line items for unemployment compensation and workers compensation.



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Lawful Use of Tort Fund Revenue and Risk Management Programs

- Section 9-107(b) of the Tort Immunity Act – Pursuant to, monies in the Liability, Protection, and Settlement Fund may be used to pay:
 - "the cost of insurance, individual or joint self-insurance (including reserves thereon), including all operating and administrative costs and expenses directly associated therewith, claims services and risk management directly attributable to loss prevention and loss reduction, legal services directly attributable to the insurance, self-insurance, or joint self-insurance program, and educational, inspectional, and supervisory services directly relating to loss prevention and loss reduction ... including all costs and reserves directly attributable to being a member of an insurance pool ...";
 - principal and interest on bonds issued to create insurance reserve or self-insure;
 - judgments and settlements arising from tort liability; and
 - "the cost of risk management programs."

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Common fund-related objections to Taxing District levies:

Loss in Collection

- Allege that County Clerk improperly added % for anticipated loss in collection when historical collection rate did not justify the additional tax.
- Taxing Districts should evaluate potential collection loss in light of current events.

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thank you!

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Scott focuses his practice in the area of real property taxation and assessment appeals, where he has tried several cases before the State of Illinois Property Tax Appeal Board, and he litigates cases in the circuit court on valuation and tax rate objections.

Scott also practices in the area of commercial transactions and local government, including contract drafting and review, litigation and alternative dispute resolution. He has experience in representing general contractors, local governments and business owners in all aspects of civil litigation.

Prior to joining Robbins Schwartz, Scott concentrated his practice on litigation, in the areas of commercial disputes, construction defects and labor and employment issues. Scott is also a former judicial extern to the Honorable Michael J. Reagan, United States District Judge, Southern District of Illinois.

RECENT PUBLICATIONS

Author, "*PTAB Clarifies Uniformity Standards for Income Properties*," Illinois State Bar Association's *Tax Trends* (2015)

Author, "*Chicago Bears Football Club v. The Cook County Department of Revenue*, 2014 IL App (1st) 122892," *Tax Trends*, Illinois State Bar Association (2014)

Contributing author, "Illinois Supreme Court Clarifies Standard Review for Zoning Decisions," *Illinois Municipal Review* (2008)

RECENT PRESENTATIONS

Property Tax Assessment Challenges and How to Defend Your Tax Base, PMA Financial Network, LLC (June 2020)



PRACTICE AREAS

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Energy Law
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Neal represents municipalities, school districts, community colleges and other local governmental clients as well as companies and individuals in a wide range of complex legal matters. In addition to representing clients in tort and commercial litigation, Neal represents clients in several unique areas of the law including land use and zoning litigation, construction litigation and election law and campaign finance matters. Neal has represented clients in state and Federal Court and before administrative agencies such as the Illinois State Board of Elections, the Illinois Commerce Commission, and the Illinois Labor Relations Board.

Neal advises clients in contract drafting and review. For local governmental clients, he prepares and reviews ordinances, resolutions and intergovernmental agreements, attends board and committee meetings and advises elected and appointed officials and employees on all types of legal issues that concern local governmental clients.

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Illinois Leading Lawyer, Election, Political & Campaign Law; Governmental, Municipal, Lobbying & Administrative Law; Land Use, Zoning & Condemnation Law; and School Law

RECENT PUBLICATIONS

Author, "Court affirms candidate's ballot removal, resolves lower court split," *Chicago Daily Law Bulletin* (2021)

Co-Author, "Variations, Special Uses, and Appeals from Administrative Decisions" *Land Use Law: Practice and Procedure, IICLE* (2021)

Author, "Residency" *Election Law, IICLE* (2020)

Author, "Vacancies in Office and Vacancies in Nomination" *Election Law, IICLE* (2020)

Author, "Federal courts weigh in on state's Nov. 3 ballot access requirements," *Chicago Daily Law Bulletin* (2020).

Co-author, "High Court Gives Detailed Account on Torts, Discretionary Immunity," *Chicago Daily Law Bulletin* (2020)

Author, "Campaign Finance and Disclosure Requirements in Illinois" *DCBA Brief* (2020).



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Will County Bar Association

Co-author, "Alarm Contractors' Argument Gets Green Light to Challenge Ordinance," *Chicago Daily Law Bulletin* (2019)

Author, "Police Officers' and Firefighters' Pension Boards" *Municipal Law: Financing, Tax and Municipal Property*, IICLE (2018)

Co-author, "1st District Refuses to Sanction 'Side Letter' Pension Spike," *Chicago Daily Law Bulletin* (2018)

"Settlement Crumbles; Appeals Court Declines to Put Pieces Back Together," *Chicago Daily Law Bulletin* (2015)

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Co-author, "Annual Town Meetings" and "Town Budget and Levy Process," *Township Clerks Handbook*, Township Clerks of Illinois (2013)

"What to do when Unsafe Properties Pose a Threat to the Welfare of the Citizens in your Township," *Township Perspective*, Township Officials of Illinois (2012)

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Legal Issues Impacting Not-for-Profit Corporations in Illinois, Bolingbrook Area Chamber of Commerce Nonprofit Coalition (February 2020)

Statutory Requirements and Ethical Considerations for Public Officials, Illinois Government Finance Officers Association (September 2019)

Intervening in Pension Board Disability Hearings, 106th Annual Conference of the Illinois Municipal League (September 2019)