

Purchasing & Construction Conference

Hyatt Lodge – Oak Brook, IL
April 8, 2022

Chicago

55 West Monroe Street, Suite 800
Chicago, IL 60603
p 312.332.7760
f 312.332.7768

Champaign-Urbana

301 North Neil Street, Suite 400
Champaign, IL 61820
p 217.363.3040
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Collinsville

510 Regency Centre
Collinsville, IL 62234
p 618.343.3540
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Lisle

550 Warrenville Road, Suite 460
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Rockford

2990 North Perryville Road, Suite 4144B
Rockford, IL 61107
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PURCHASING & CONSTRUCTION CONFERENCE APRIL 8, 2022 HYATT LODGE – OAK BROOK

AGENDA

- 8:00 a.m. – 8:30 a.m. **Registration and Continental Breakfast**
- Location: Grand Oaks Pavilion Foyer
- 8:30 a.m. – 10:30 a.m. **GENERAL SESSION**
- Location: Grand Oaks Pavilion
- Bidding 101: Bidding Requirements, Exceptions, and Strategies for Cooperative Purchasing
 - Managing a Successful Construction Project: From Team Selection to Closeout
- 10:30 a.m. – 10:45 a.m. **Break**
- 10:45 a.m. – 12:30 p.m. **RESUME GENERAL SESSION**
- Location: Grand Oaks Pavilion
- Property Tax Recapture / Other Property Tax or Finance Issue
 - Identifying Key Terms in Construction and Commercial Contracts

ROBBINS SCHWARTZ	Chicago 55 W Monroe St Suite 800 Chicago, IL 60603 p 312.332.7760 f 312.332.7768	Champaign-Urbana 301 North Neil Street Suite 400 Champaign, IL 61820 p 217.363.3040 f 217.356.3548	Collinsville 510 Regency Centre Collinsville, IL 62234 p 618.343.3540 f 618.343.3546	Lisle 550 Warrenville Road Suite 460 Lisle, IL 60532-4311 p 630.929.3639 f 630.783.3231	Rockford 2990 North Perryville Road Suite 4144B Rockford, IL 61107 p 815.390.7090
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Purchasing & Construction
Conference

April 8, 2022
Oak Brook, IL

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1

Bidding 101:
Bidding Requirements, Exceptions, and
Strategies for Cooperative Purchasing

Presented by Kenneth M. Florey, Nicole L. Karas and
Howard A. Metz and


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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.

The Duty To Publicly Bid



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The Duty To Publicly Bid

- In Illinois, public bodies are generally required to use a public bidding process when purchasing supplies, materials, services and work over a specified dollar amount.
- Each public body is governed by its own statute, which dictates the threshold amount over which contract must be bid.

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The Duty To Publicly Bid

- Those statutes also contain numerous exceptions to the public bidding requirement.
- The statutes also dictate the procedure for the bid process, such as the notice requirements for publication and the time period between the bid notice and the bid opening.

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The Duty To Publicly Bid

ILLINOIS PUBLIC ENTITY	STATUTE	PUBLIC BIDDING THRESHOLD	EXCEPTIONS TO PUBLIC BIDDING REQUIREMENT
School Districts	105 ILCS 5/10-20.21	<p>\$25,000 (unless lower amount required by board policy)</p> <p>Construction not to exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility</p>	<ul style="list-style-type: none"> • Services of individuals possessing a high degree of professional skill • Printing of finance committee reports and departmental reports • Printing or engraving bonds, tax warrants, etc. • Perishable foods and beverages • Maintenance or servicing of equipment by the manufacturer or its authorized agent • Information technology • Duplicating machines or supplies • Natural gas • Equipment previously owned by another entity • Construction not to exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility • Goods and services from another governmental agency • Goods and services procurable from only one source (e.g., magazines, periodicals, etc.) • Emergency expenditure with approval of 3/4 of board members • State master contracts • Transportation contracts must be bid but factors other than price can be used to determine award

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The Duty To Publicly Bid

Community College Districts	110 ILCS 805/3-27.1	\$25,000 (unless lower amount required by board policy) Construction not to exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility	<ul style="list-style-type: none"> • Services of individuals possessing a high degree of professional skill • Printing of finance committee reports and departmental reports • Printing or engraving bonds, tax warrants, etc. • Perishable foods and beverages • Maintenance or servicing of equipment by the manufacturer or its authorized agent • Information technology • Duplicating machines or supplies • Natural gas • Equipment previously owned by another entity • Construction not to exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility • Goods and services from another governmental agency • Goods and services procurable from only one source • Emergency expenditure with approval of 3/4 of board members
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The Duty To Publicly Bid

Park Districts	70 ILCS 1205/8-1(c)	\$20,000	<ul style="list-style-type: none"> • Services of individuals possessing a high degree of professional skill • Printing of finance committee reports and departmental reports • Printing or engraving bonds, tax warrants, etc. • Utility services • Information technology • Duplicating machines or supplies • Goods and services from another governmental agency • Equipment previously owned by another entity • Magazines, books, periodicals, pamphlets and reports • Emergency expenditure with approval of 3/4 of board members
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The Duty To Publicly Bid

Library Districts	75 ILCS 5/5-5	\$20,000	<ul style="list-style-type: none"> • Services of individuals possessing a high degree of professional skill • Printing of finance committee reports and departmental reports • Printing or engraving bonds, tax warrants, etc. • Maintenance or servicing of equipment by the manufacturer or its authorized agent • Information technology • Duplicating machines or supplies • Utility services • Goods and services from another governmental agency • Equipment previously owned by another entity • Goods and services procurable from only one source (e.g., magazines) • Emergency expenditure with approval of 3/4 of board members
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The Duty To Publicly Bid

Counties	55 ILCS 5/5-1022	<p>\$30,000 (counties with less than 2,000,000 inhabitants)</p> <p>Information technology less than \$35,000</p>	<ul style="list-style-type: none"> • Professional services • Emergency authorized by board • Contracts with the federal government • Equipment previously owned by another entity • Purchases at auction • Information technology less than \$35,000
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The Duty To Publicly Bid

Municipalities (less than 500,000 inhabitants)	65 ILCS 5/8-9	\$20,000 (public improvements and their maintenance) Not obligated by statute to bid service contracts or contracts for materials; however, many municipalities have adopted ordinances requiring competitive bidding	<ul style="list-style-type: none"> • Authorization by a vote of 2/3 of its aldermen or trustees • Contracts with the federal government
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Governmental Joint Purchasing

- Authority to do pursuant to IL Constitution – Intergovernmental Cooperation Act (5 ILCS 220/1) and Joint Purchasing Act (30 ILCS 525/1).
- Supersedes the requirements of the individual bidding requirements. 30 ILCS 525/2.
- Purchase of personal property, supplies and services. Id.

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Governmental Joint Purchasing

- Needs to meet certain legal requirements:
 - Cooperative must be run by a **government body**. 30 ILCS 525/1-2.
 - Purchases must be based on **competitive solicitations**. 30 ILCS 525/2.
 - Bids and proposals solicited by **public notice** as specified by the Joint Purchasing Act. 30 ILCS 525/4.



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Governmental Joint Purchasing

- All purchases, orders or contracts shall be awarded to the **lowest responsible bidder or highest-ranked proposer**, taking into consideration:
 - The **qualities** of the articles or services supplied;
 - Their **conformity** with the specifications;
 - Their **suitability** to the requirements of the participating governmental units; and
 - The **delivery** terms. Id.

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Governmental Joint Purchasing

The managing unit of government must **maintain a record**, identifying each bid, bidder's identity, and the successful bid. Id.

After award the record must be **open to public inspection**. Id.

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Governmental Joint Purchasing



- Purchases must be made in compliance with the **Local Government Prompt Payment Act**. 30 ILCS 525/4.1
- The personal property, supplies or services involved shall be **distributed or rendered directly** to each governmental unit taking part in the purchase. 30 ILCS 525/3.
- The Seller **bills each governmental unit separately** for its proportionate share of the cost of the personal property, supplies or services purchased. Id.
- The **credit or liability** of each governmental unit shall remain separate and distinct. **Disputes** between bidders and governmental units shall be resolved between the immediate parties. Id.

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Governmental Joint Purchasing

- Strategies for Success with Joint Purchasing options:
 - Get informal quotes or estimates from local vendors/contractors first. It may be cheaper to use the traditional bidding method.
 - Look at the offerings of all of the cooperatives before deciding to “qualify” one particular cooperative.



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Governmental Joint Purchasing

- Strategies for Success with Joint Purchasing options:
 - Examine the terms for participation:
 - Is there an entry fee?
 - Is there a participation fee?
 - Are there other costs of participation?

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Governmental Joint Purchasing

- Strategies for Success with Joint Purchasing options:
 - Have legal counsel provide an opinion on whether participation in a particular cooperative will meet the requirements of Illinois law.
 - Examine the proposed contract (or have your counsel examine it).
 - Identify any unacceptable business or legal terms and conditions.
 - Confirm in advance that you will be able to amend terms and conditions to meet your business expectations, and to comply with Illinois law.

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Local Government Professional Services Selection Act - 50 ILCS 510/0.01



- RFP/RFQ process required for the selection of Architects, Engineers & Land Surveyors
- RFP can be solicited by either publication, posting on your website, or sending notice to firms who have a current statement of qualifications with the public body

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Local
Government
Professional
Services
Selection Act - 50
ILCS 510/0.01

- RFP not required if the public body has a previous satisfactory relationship with the firm
- RFP not required for contracts less than \$40,000 or in emergency situations.

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The Bidding
Process



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Bid Submittals

- Bid Specifications
 - Certainty Required
 - Sole Sourcing
 - Bid Addendum & Questions
 - Pre-Bid Meeting

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Bid Submittals

- Sealed Bids
- Electronic Bids
- Timeliness of Bids
- Modification, Withdrawal or Re-submittal of Bids Before Bid Opening



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Bid Submittals

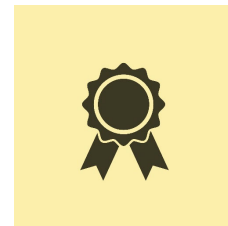
- Public Opening and Reading of the Bids
 - Withdrawal or Modification after the Bids Are Received

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Awarding The Bid – Criteria

- Lowest
 - Alternate Bids
- Responsive
 - Material Defects – Nonwaivable
 - Minor Variances – Waivable
- Responsible
 - Pre-qualification of Bidders
- Post-Bid Pre-Award Negotiations



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Rejecting The Bid

- Discretion “to reject any and all bids.”
- Documenting the Basis for Awarding/Rejecting Bid

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Bid Mistakes - Circumstances Warranting Judicial Relief From A Bid Mistake

- Material Feature of the Contract
- Neglect in the Preparation of the Bid
- Maintaining the Status Quo
- The Owner’s Knowledge of the Mistake
- Unconscionability

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Questions?



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Managing a Successful Construction Project: From Team Selection to Closeout

Presented by Kenneth Florey, Howard Metz, Steven Adams, Nicole Karas, Matthew Gardner & Christopher Gorman

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Goals



- Basic Understanding of Construction Projects
- Intergovernmental Coordination
- Setting the Parameters for Success
- Selecting the Consultants

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Project Assumptions

- Governing board is supportive
- Administrative team has approved
- Programming has been determined
- Community has been informed



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Preliminary Construction Considerations

- Land Acquisition – Closed Session Discussion; there is a reason
- Intergovernmental Issues – to be negotiated
 - Zoning Codes – being a good neighbor
 - Storm Water Requirements – best of luck!
 - Site Access – traffic and safety
 - Utility Permits and Connections – avoiding fees

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Preliminary Construction Considerations

- Project Financing: Paying the Bill
 - Cash on hand
 - Acquiring debt
 - Purchasing Bonds
 - Specialty Consultants



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Preliminary Construction Considerations

- Referendum Issues
 - Available Debt Service
 - Use your Architect/CM to help
 - Determining the amount
 - Predetermining Community Support
 - Board Approval
 - Floating Bonds; Passage



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You Need a Good Construction Team!

- Selecting Project Team
 - Architect
 - Construction Manager
 - General Contractor
 - Owner's Representative
 - Commissioning Agent
 - Specialty Consultants



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Negotiating with Your Construction Team

- Critical Contract Negotiations
 - Architect – Can you ask about fees
 - Construction Manager – Unburdens Staff
 - Owner’s Representative – Supports Public Body’s Goals
 - Commissioning Agent – Works on behalf of Public Body
 - Specialty Consultants – Discretion of Public Body



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Limiting Risk on Construction Projects

- Risk Management
 - Setting the timeline
 - Skill set of administrative staff
 - Public body’s employees’ input during design
 - Site access/building safety
 - Controlling the budget
 - Board Approval
 - Completing on time



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Estimated Timeline Considerations for Public Construction Projects

- Setting the Timeline
 - Programming 3 months
 - Space Planning 3 months
 - Schematic Design 3 months (many factors drive)
 - Design Development 3 months (many factors drive)
 - Construction Documents 3 months (many factors drive)
 - Bid Time Frame 2 months
 - Board Approval 1-2 months
 - Physical Construction 4-12 months



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Bidding for Public Construction Projects

- Bidding Documents
 - Advertisement
 - Instructions to Bidders
 - Bidder Qualification Criteria
 - General and Special Conditions
 - Contract Form
 - Bond Forms

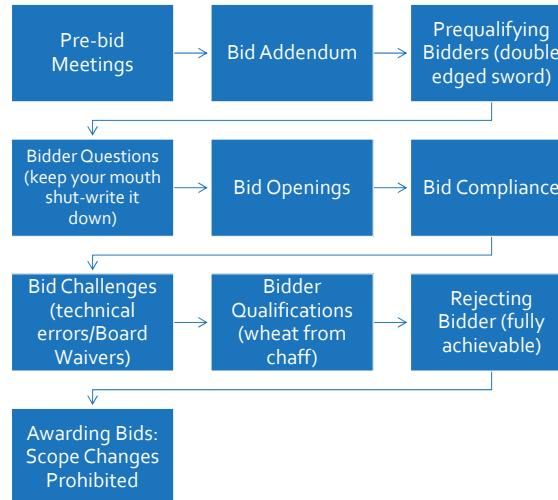


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Bidding for Public Construction Projects

Public Bidding-Required Steps



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Construction Phase Problems



- Unforeseen Conditions: Change Orders
- Contractor Default: Nuclear Option
- Taking Over Portions of the Project: Practical Approach
- Surety Claims
- Construction Defects
 - Contractor Errors
 - Design Errors and Omissions

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Construction Phase Problems



- How long do you have to file a lawsuit?
- Who is included in the lawsuit?
- The role of experts.
- Alternative Dispute Resolution (ADR)
 - Arbitration or Mediation?
- Building Repairs During the Litigation.
- What are the recoverable damages?

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Managing Public Construction Projects

- Small Projects: Many rules still apply
- Contractor Certificate of Insurance Review
- Payment and Performance Bond Review
- Pay Requests
- Certified Payrolls
- Change Order Issues
- Delay Issues
- Labor Disputes (Picketing and Strikes)

EXPECT DELAYS

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Managing
Public
Construction
Projects

- Project Close Out Issues
 - Lien Claims
 - Punch List Problems
 - Retainage Issues
 - Warranty Documents
 - 12 Month Walk-through



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Construction
Project
Checklist

ACTIVITY DESCRIPTION	BOARD ACTION REQUIRED	TASK COMPLETED
Land Acquisition	X	
Project Financing	X	
Selecting Project Team		
Architect	X	
Construction Manager	X	
Owner's Representative	X	
Commissioning Agent	X	
Specialty Consultants	X	
Contract Negotiations		
Referendum Issues		
Risk Management		
Statutory Concerns		
Intergovernmental Issues		
Building Codes		
Storm Water Requirements		
Site Access		
Utility Permits and Connections		
Bidding Documents		
Advertisement		
Instructions to Bidders		
Bidder Qualifications Criteria		
General and Special Conditions		
Contract Form		
Bond Forms		

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Construction
Project
Checklist

ACTIVITY DESCRIPTION	BOARD ACTION REQUIRED	TASK COMPLETED
Public Bidding		
Pre-bid Meetings		
Bid Addendum		
Prequalifying Bidders		
Bidder Questions		
Bid Openings		
Bid Compliance		
Bid Challenges		
Bidder Qualifications		
Rejecting Bidders	X	
Awarding Bids	X	
Small Projects		
Contractor Certificate of Insurance Review		
Payment and Performance Bond Review		
Pay Requests	X	
Certified Payrolls		
Change Order Issues	X	
Delay Issues		
Labor Disputes (Picketing and Strikes)		
Unforeseen Conditions	X	
Contractor Default	X	
Taking Over Portions of the Project	X	
Surety Claims	X	
Construction Defects	X	
Contractor Errors		
Design Errors and Omissions		
Project Close Out Issues		
Lien Claims		
Punch List Problems	X	
Retainage Issues	X	
Warranty Documents		

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Questions?



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Resume General Session at 10:45 a.m.



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Refund Recapture

Top Ten Questions and Maximizing Revenue Under PTELL Limits

Presented by Scott L. Ginsburg and Katie N. DiPiero

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1. What Is the Refund Recapture?

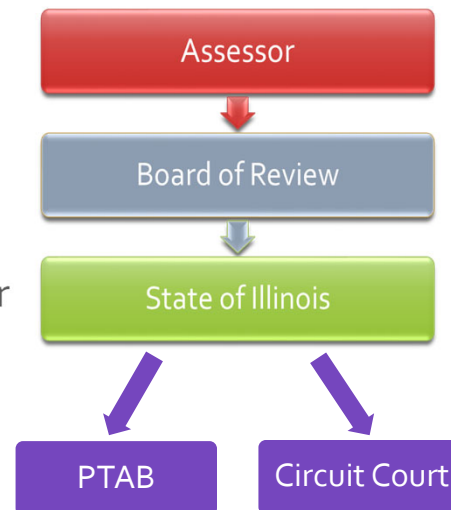
- Adjustments for certificates of error, certain court orders, or final administrative decisions of the Property Tax Appeal Board - 35 ILCS 200/18-233
 - Beginning levy year 2021, annual refunds added to levy.
 - PTAB Decisions, Circuit Court Assessment Objections, and Certificates of Error.
 - Aggregate refunds over past 12-months certified by County Treasurer by November 15.
 - For purposes of the PTELL, excluded from net year's aggregate extension base.

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2. Which Refunds Are Included?

- PTAB Decision
- Specific Objection in Circuit Court
- Certificate of Error
- Not Tax Rate Objections



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3. Which Taxing Districts Are Affected?

- Applies to all taxing districts on a property's tax bill.
- PTELL v. Non-PTELL
 - Section is part of PTELL, but Illinois Department of Revenue guidance interprets statutory intent applying to both PTELL and non-PTELL districts.

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4. How Can We Spend the Funds?

- Recaptured refunds are distributed by county to separate fund or pro-rata
- Excessive accumulation concerns
- Fund transfers
- Permissible transfers under 17-2A
 - Educational to Operations and Maintenance (O&M")
 - Educational to Transportation
 - O&M to Educational
 - O&M to Transportation
 - Transportation to Educational
 - Transportation to O&M
 - Tort to O&M
- Sunset extended – After June 30, 2024 transfer must be to meet one-time, non-recurring expense.



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4. How Can We Spend the Funds?

- ISBE Rule 100.10
- Transfers to Capital Projects Fund:
 - “When revenues or other sources of funds are pledge to pay for a capital project or acquisition, the moneys shall be transferred into the Capital Projects Fund.
 - “All other inter-fund transfers shall be accomplished in accordance with the applicable provision of Section 17-2A of the School Code.”
- ISBE Audit Form Account Number 8840 – “Fund balance transfer to pay for Capital Projects.”
- Statutory authority for ISBE Rule 100.10 is unclear
- ***Safe approach is to transfer to O&M under 17-2A***

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5. Why Did We Lose Our Collection Loss Extension?

- Loss in collection
 - Annual estimate of revenue that cannot be collected from taxpayers.
 - Based on historical collection rates.
 - Clerk calculates rate sufficient to fund the levy.
- Certain counties have removed collection loss extensions from levy due to refund revenue recaptured under the new law.

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6. What If the Refund Recapture Puts Us Over Truth in Taxation Limits?

- Truth in Taxation allows for a post-levy hearing
 - More than 105% of preceding levy
 - Published notice
 - Public hearing
 - Board Resolution

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7. Who Pays for the Recapture?

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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8. Do We Have to Take the Recaptured Funds?

- Language of the statute is automatic.
- Some counties are offering the option to abate.
 - Resolution directing county clerk to abate;
 - Filed with the clerk.

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9. Should Our District Still Participate in PTAB and Assessment Appeals?

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



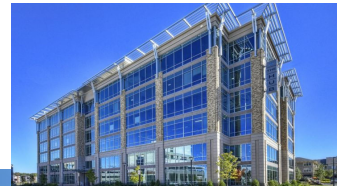
Final Assessment

- Class A valued at \$95/sf
- Class B valued at \$85/sf
- Class C valued at \$65/sf



Final Assessment

- Class A valued at \$75/sf
- Class B valued at \$55/sf
- Class C valued at \$35/sf



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10. What Challenges Does This Present?

Potential Legal Challenges

“The legislature, in my opinion, usurps the judicial and quasi-judicial separate powers and unconstitutionally preempts the agencies or court decisions which would grant assessment appeals. It does so by permitting any district against which an assessment reduction or appeal is granted to extend taxes in the following year, regardless of PTELL, in the amount of the total of all assessment reductions, from whatever agency/court decisions, across all taxpayers, including the taxpayer who successfully received reductions at any level, including the courts. In my opinion, the manner of spreading the additional levy across all taxpayers is likewise unconstitutional.”
– Taxpayer Attorney

“I’m not sure the bill accomplishes what it purports to do. As far as I can tell, SB508 does not change the limiting rate calculation. So a supplemental levy presumably would be no different than a balloon levy, which does not impact the limiting rate.”
– Local Government Attorney

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10. What Challenges Does This Present?

- Potential rider bills, revisions, or amendments
- 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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Questions



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Identifying Key Terms in Construction and Commercial Contracts

Presented by Matthew Gardner and Christopher Gorman

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Today's Focus

Key terms for:


- General Commercial Contracts
- Construction
- Cooperative Purchasing
- Data Privacy and Security

Question and Answer

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General Commercial Contracts



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Key Terms in General Commercial Contracts

Insurance

- The contract should require the vendor to maintain commercial general liability insurance, automobile liability insurance, worker's compensation insurance, as well as an umbrella insurance policy with minimum coverage amounts acceptable to the public body.
- Some contracts may require tailored policies or should extend insurance requirements to subcontractors and/or include coverage for:
 - Professional Liability
 - Sexual Abuse
 - Cyber Liability

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Key Terms in General Commercial Contracts

Insurance

- The public body, its officers, employees and agents should be named as additional insureds on the commercial general liability, automotive liability and umbrella policies.



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Key Terms in General Commercial Contracts

Indemnification

- Contracts should contain an indemnification provision requiring the vendor to indemnify, defend, and hold the public body harmless against any liabilities it might incur as a result of the vendor's negligence or breach of contract.

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Key Terms in General Commercial Contracts

Limitation of Liability

- These clauses attempt to limit the vendor's liability to a specific dollar amount. Some of these clauses even attempt to limit this liability for intentional wrongdoing on the part of the vendor. If possible, limitation of liability clauses should be deleted in their entirety.

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Key Terms in General Commercial Contracts

Statute of Limitations

- Form contracts often contain a provision requiring that a lawsuit for breach of the agreement be brought within a specified time. This time period is often shorter than the time period allowed under Illinois law to bring such a lawsuit.
- If possible, statute of limitations paragraphs should be deleted from the form so that Illinois law controls the time period to bring a lawsuit.

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Key Terms in General Commercial Contracts

Automatic Renewals

- Some service contracts contain a clause that the contract will automatically renew unless cancelled in writing within a specified number of days before the end of the term.
- This clause should be modified to require mutual consent of the parties to renew any contract.



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Key Terms in General Commercial Contracts

Termination for Convenience

- It is advisable in most longer term service contracts that a public body maintain the right to terminate the contract with an agreed upon notice period.

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Key Terms in General Commercial Contracts

Attorneys' Fees

- Most form contracts provide that, should a lawsuit be necessary, the vendor will be entitled to recover their attorney fees if they are successful.
- This paragraph should be either deleted in its entirety or modified so that the attorneys' fee provision is either solely in favor of the public entity or at least made mutual so that either party will recover their attorneys' fees if successful in litigation.

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Key Terms in Construction Contracts



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Key Terms in Construction Contracts

AIA Contract Documents

- Contract Sum and Change Orders
- Substantial Completion
- Allowances and Contingencies
- Progress Payments
- Liquidated Damages

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Key Terms in Construction Contracts

Prevailing Wage Act Compliance

- Applies to contracts for “public works” which are defined as “fixed works constructed or demolished by any public body, or paid for wholly or in part out of public funds.”
- This includes “any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.”

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Key Terms in Construction Contracts

Prevailing Wage Act Compliance

- If your public body has a contract for “public works”, it must require the contractor to comply with all requirements of the Prevailing Wage Act.
- A recent change in the Act now requires contractors to submit certified payrolls on a monthly basis directly to the Dept. of Labor.

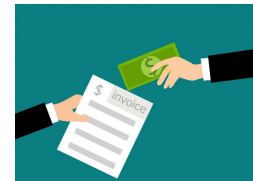
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Key Terms in Construction Contracts

Payment and Performance Bonds (30 ILCS 550/1)

- Each contract for public work in Illinois exceeding \$50,000 requires the contractor to furnish performance and payment bonds in the full amount of the contract.



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Key Terms in Construction Contracts

A Performance Bond is:

- a. A surety company's guarantee to the owner that the contractor will complete the project in accordance with the contract, and defines the duty of the surety to the owner in the event of the contractor's default.

A Payment Bond is:

- a. A surety company's guarantee to the owner that the contractor will pay all contractors furnishing material and/or labor on the project, in accordance with the contract.

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Key Terms in Construction Contracts

- Public bodies should require each contractor having a contract with the public body to have the bonds required by the Public Construction Bond Act, 30 ILCS 550/1, *et seq.*
- If public body is paying subcontractors directly (if using a construction manager), the subcontractors should be required to provide the bond.

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Key Terms for Cooperative Purchasing



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Key Terms for Cooperative Purchasing

- A public body should ensure that all required terms are included in the contract if appropriate, including:
 - Terms requiring compliance with the Prevailing Wage Act;
 - Terms requiring Performance and Payment Bonds; and
 - Terms required by state or federal grant requirements.

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Key Terms for Cooperative Purchasing

- Choice of Law and Forum
 - Cooperative contracts may contain a provision that the contract shall be controlled by the laws of a state other than Illinois.
 - These provisions may further provide that the venue for any action brought pursuant to the contract will be outside of Illinois.
 - These provisions should be modified to provide that Illinois law controls the contract and the venue will be where the public body is located.

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Key Terms for Data Security and Privacy



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Key Terms for Data Security and Privacy

- Require vendors to maintain cyber liability coverage and review their coverages. Existing coverages may not be adequate.
- Coverage should include (at a minimum):
 - \$1 million per occurrence/\$2 million aggregate.
 - Limits should be increased based on nature of service and data being stored Technology E&O for IT firms.
- Require the public body to be named as an additional insured.

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Key Terms for Data Security and Privacy

- Contracts should address how each element of data security is addressed when handling information or data received from the public body, including:

• Access	• Use
• Disclosure	• Modification
• Destruction	• Breach notification

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Key Terms for Data Security and Privacy

- In many cases, a public body should require a vendor to identify the nationally recognized cybersecurity framework it relies on to protect its data.
- Some public bodies may be required to have specific contract terms in vendor agreements (e.g., FERPA, COPPA, ISSRA, SOPPA requirements).

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Questions?



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Thank you!

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Ken Florey concentrates his practice representing public and private clients, including municipalities, school districts, community colleges, townships, libraries, private owners, contractors and design professionals regarding land use, municipal law, construction, tax, finance and litigation. Ken has also started offering his services as a mediator with an emphasis on construction disputes.

Ken was the Chair of the DuPage County Bar Association's Local Government Committee. He was appointed Special Assistant Attorney General to prosecute and defend construction litigation claims on behalf of the Illinois Capital Development Board. Ken is also a member of the Illinois ASBO Service Associate Advisory Committee. He served as a Trustee for the Village of Lombard for eight years and is a member of the Lombard Fire and Police Commission.

MEDIATOR CERTIFICATE: Northwestern University 2017

AWARDS

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

Illinois Association of School Business Officials, Above and Beyond Award

Illinois Institute for Local Government Law, Litigation Award

RECENT PUBLICATIONS

Contributing author, "Joint Purchasing Everything You Want to Know but Are Afraid to Ask!" *UPDATE Magazine*, Illinois ASBO (2019)

Contributing author, "How Far Does the Law Allow Schools to Go?" *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, "Top 11 Public Bidding Questions & Solutions" *UPDATE Magazine*, Illinois ASBO (2018)

Co-author, "School Construction from Start to Finish: A Project Checklist," *School Business Affairs Magazine*, ASBO (2018)

Contributing author, "Top 11 Public Bidding Questions," *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, "Meditation a Win-Win for Clients and their Attorneys in Construction Litigation," *Chicago Daily Law Bulletin* (2018)



PRACTICE AREAS

Commercial Law
Construction Law
Education Law
Energy Law
Litigation
Mediation
Municipal Law
Public Finance & Taxation
Real Estate Development
Zoning, Planning & Land Use

EDUCATION

J.D., DePaul University
College of Law; Managing
Editor, *DePaul Journal of
Art and Entertainment
Law*

B.A., University of Illinois
at Urbana-Champaign

ADMITTED TO PRACTICE

U.S. District Court for the
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Supreme Court of Illinois

Contributing author, "Organization, Finance, and Property," Illinois School Law, IICLE (2017)

"Construction Project and Contract Pitfalls" *Update Magazine*, Illinois ASBO (2017)

"The Good, the Bad and the Ugly of School Bidding Requirements," *UPDATE Magazine*, Illinois ASBO (2016)

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

"On Public Display: Advertising in Schools," *UPDATE Magazine*, Illinois ASBO (2015)

RECENT PRESENTATIONS

School Construction and Purchasing Scenarios: Common Problems with Practical Solutions, ASBO International and AC&E (October 2021)

Using ESSR Funds for Facilities Improvements: School Construction from Start to Finish, Illinois ASBO and IASPA (October 2021)

Prevailing Wages and Bidding, Northeastern Illinois Facility Professionals (November 2021)

No Weak Links: Fostering Positive Intra-Board Relationships, IASB/ISA/IASBO (November 2021)

No Weak Links: Fostering Positive Intra-Board Relationships, IASB (July 2021)

Robbins Schwartz

STEVEN B. ADAMS

PARTNER, CHICAGO

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Steve represents government and commercial clients in a wide range of legal matters. Since beginning his practice in 1985, he has provided comprehensive general counsel services for over 30 Chicago-area park districts, municipalities, school districts and other units of local government primarily in northeastern Illinois.

Steve has vast experience handling all aspects of corporate representation of park district and other local governmental units, including Open Meetings Act/FOIA compliance, public finance and taxation, labor and employment, contracts and regulatory and administrative law matters, election law, civil rights issues, intergovernmental cooperation and conflict including regional intergovernmental agreements, foundations, not-for-profits and 501(c)(3) organizations, complex capital and real estate projects, and litigation. Steve has tried cases and actively litigated in state and federal courts on civil rights, election law, land use, construction law and state regulatory issues

PROFESSIONAL BACKGROUND

Steve is a faculty member at the Illinois Institute of Continuing Legal Education Local Government Law Institute, a member of the Lambda Alpha Land Economics Society, a member of the Board of Directors of the Naperville Heritage Society, former member of the Board of Directors of the Naperville Chamber of Commerce, and former chairman of the Chamber's Legislative Committee. Steve has served as a Police and Fire Commissioner for the City of Naperville, and as an Executive Committee member of the Illinois Police and Fire Commissioner's Association.

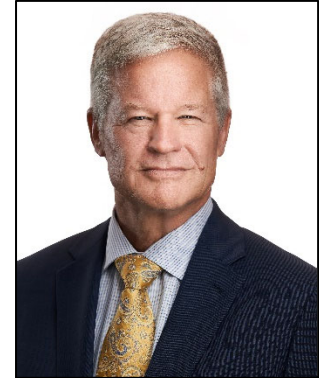
RECENT PUBLICATIONS

Steve is co-author of the "Park District Guide to Illinois Sunshine Laws," published in 2017 by the Illinois Association of Park Districts, and co-author of the Illinois Institute for Continuing Legal Education's treatise on Park District Law, published in 2011.

He has had several articles pertaining to Illinois park district law published. Examples of his recent publications include:

- "SCOTUS Draws Line on COVID-19 Restrictions and Houses of Worship" Chicago Daily Law Bulletin Vol 167, No. 3 (January 7, 2021);
- "Public Officials Social Media Accounts Newest Legal Tussle" published in the Chicago Daily Law Bulletin Vol. 165, No. 78 (April 22, 2019);

"Playing Nice in the Sandbox: Tips to Reduce Board Conflict and Improve Board Outcomes" in the Illinois Park and Recreation Magazine, Vol. 46, No. 5 (September/October 2015).



PRACTICE AREAS

Construction Law
Municipal Law
Park District Law
Real Estate Development
Township Law

EDUCATION

J.D., Indiana University
Maurer School of Law

B.A., History & Political
Science, Indiana
University Bloomington

ADMITTED TO PRACTICE

Supreme Court of the
United States

U.S. Court of Appeals for
the Seventh Circuit

U.S. District Court for the
Northern District of Illinois

Illinois Supreme Court

RECENT PRESENTATIONS

Steve is an annual public speaker on local government legal developments, including presentations on real estate, development, tort liability, board development, governance, governmental policy and regulatory matters. He has made over 50 presentations to organizations such as the Illinois Association of Park Districts, the Illinois Institute of Continuing Legal Education, the National Business Institute, and the Illinois Park and Recreation Association. Representative presentations include:

Commissioners' Use of Social Media, IAPD State Conference (2021)

Legal/Legislative Update, IAPD State Conference (2021)

Affirmative Litigation by Municipalities, IICLE Local Government Law Institute (December 2019)

Budgets, Levies and Bonds, IAPD State Conference (2019)

Boardmanship Essentials I and II, IAPD State Conference (2018-2020)

ORGANIZATIONS

American Bar Association

DuPage County Bar Association

Illinois State Bar Association

Lambda Alpha Land Economics Society

Robbins Schwartz

KATIE DIPIERO

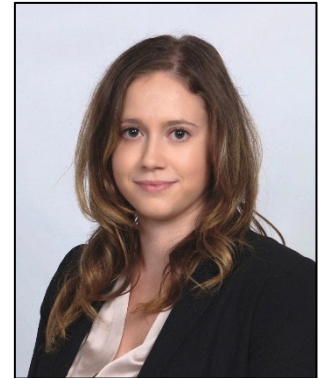
ASSOCIATE, CHICAGO

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Katie practices in the firm's public finance and taxation, commercial, construction, and real estate practice groups. Katie represents school districts, community colleges, and municipalities before the Property Tax Appeal Board and the circuit court. She represents clients in the areas of real property taxation, valuation, tax rate objections, and assessment appeals. Katie also represents clients in the areas of commercial transactions, including drafting and negotiating contracts, litigation, and alternative dispute resolution.

Prior to joining Robbins Schwartz, Katie concentrated her practice in tax planning and represented clients in corporate reorganizations. She also has experience working for government entities and non-profits.



PRACTICE AREAS

Commercial Transactions
Construction Law
Public Finance & Taxation
Real Estate Development

EDUCATION

J.D., *cum laude*, Seattle
University

M.B.A., Seattle University

B.A., University of Kansas

ADMITTED TO PRACTICE

Supreme Court of Illinois

Supreme Court of
Washington

Robbins Schwartz

MATTHEW J. GARDNER

PARTNER, CHICAGO

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Matthew Gardner is a member of the firm's construction, real estate, and public finance practice groups. Matt represents private and public project owners over the course of construction and development projects, beginning with property acquisition, zoning, contract negotiation and bidding, project management, surety and warranty claims and any resulting litigation concerning payment, delays or design or construction defects. Matt also represents contractors, subcontractors and suppliers on a variety of construction-related matters, including payment claims, preserving and enforcing lien rights and defending defect claims.

Matt is the past Chair of the Chicago Bar Association Construction Law and Mechanics Lien Subcommittee (2018-19), has testified before the General Assembly on construction-related matters, and is a member of the Illinois State Bar Association and Chicago Bar Association Judicial Evaluation Committee. Matt has also performed pro bono services representing clients through Chicago Volunteer Legal Services and Franciscan Outreach.

AWARDS

Illinois "Rising Star", by Super Lawyers Magazine, in the area of Construction Litigation (2020-2021)

RECENT PUBLICATIONS

Co-author, "School Construction from Start to Finish: A Project Checklist," *School Business Affairs Magazine*, ASBO (2018)

Contributing author, "Top 11 Public Bidding Questions," *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, "Meditation a Win-Win for Clients and their Attorneys in Construction Litigation," *Chicago Daily Law Bulletin* (2018)

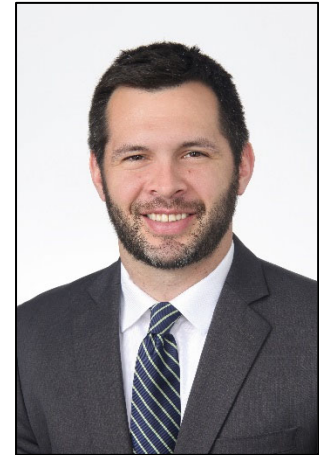
Contributing author, "Organization, Finance, and Property," *Illinois School Law*, IICLE (2017)

"The Good, The Bad and The Ugly of School Bidding Requirements," *UPDATE Magazine*, Illinois ASBO (2016)

"School District and Zoning Exemptions," *Chicago Daily Law Bulletin* (2015)

RECENT PRESENTATIONS

School Bidding, Procurement, and Prevailing Wages: From the Basics to the Advanced, IASA Spring Legal Seminar (March 2022)



PRACTICE AREAS

Commercial Law
Construction Law
Public Finance & Taxation
Real Estate Development

EDUCATION

J.D., University of
Wisconsin Law School

B.S., University of Utah

ADMITTED TO PRACTICE

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

Supreme Court of Utah

Supreme Court of
Wisconsin

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

Construction Law 101, National Business Institute (December 2019)

Foolproof Contract that Abide by State Laws, 2019 Illinois ASBO Annual Conference (May 2019)

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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

Commercial Law
Construction Law
Education Law
Energy Law
Litigation
Municipal Law
Public Finance & Taxation
Real Estate Development
Zoning, Planning & Land Use

EDUCATION

J.D., Washington
University School of Law

B.A., DePauw University

ADMITTED TO PRACTICE

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

ORGANIZATIONS

Illinois State Bar
Association, State and
Local Taxation Section
Council, Member

Robbins Schwartz

CHRISTOPHER R. GORMAN

ASSOCIATE, CHICAGO

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Chris practices in the firm's commercial, construction, and real estate practice groups, representing public sector clients in commercial transactions, contracting, construction and related transactional matters. Chris has also served in the firm's labor and employment practice group and counseled employers in all aspects of labor and employment law, including labor relations, collective bargaining, grievance and dispute resolution, workplace investigation, employee discipline, terminations and reductions in force, and employment discrimination. Chris also advises clients on board governance and compliance with the Illinois Freedom of Information Act and Open Meetings Act.

Prior to joining Robbins Schwartz, Chris served as in-house counsel for a nonprofit organization, a charter school management organization and a state regulatory agency overseeing higher education financing.

RECENT PUBLICATIONS

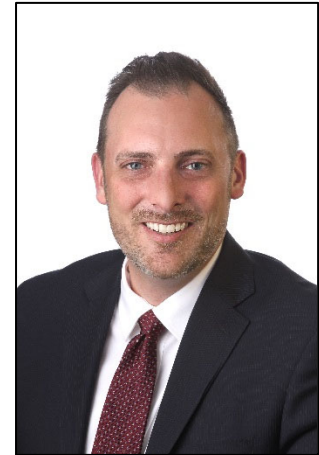
Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law: Transactional Considerations 2021 Edition*, IICLE (2021)

"Continuing Controversy Over FCC's Efforts to Improve Broadband Connectivity," *Energy, Utilities, Telecommunications and Transportation Newsletter*, Illinois State Bar Association (2021)

"The Future of For-Profit Online Charter Schools," *Labor and Employment Law Quarterly*, American Bar Association (2016)

RECENT PRESENTATIONS

School Bidding, Procurement, and Prevailing Wages: From the Basics to the Advanced, IASA Spring Legal Seminar (March 2022)



PRACTICE AREAS

Commercial Transactions
Construction Law
Labor & Employment
Real Estate Development

EDUCATION

J.D., University of
Minnesota Law School

B.A., University of
Minnesota – Twin Cities;
Presidential Scholar

ADMITTED TO PRACTICE

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

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SENIOR COUNSEL, LISLE

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Nicole Karas focuses her practice on local government and corporate law. She serves as outside general counsel to local governmental clients providing a wide range of legal assistance. Nicole counsels clients on major construction, land acquisition, contract drafting and negotiation, intergovernmental cooperation agreements, board policies, personnel policies, employment issues, contracts for purchases of goods and services, Open Meetings Act, FOIA issues, and ordinance/resolution drafting.

Nicole represents corporate and non-for-profit clients in various matters, including entity formation, real estate matters, contract review, leases and other transactional matters.

While in law school, Nicole was an Associate Editor of Articles, Notes and Comments for the DePaul Law Review. Nicole is the author of *EEOC v. Luce & the Mandatory Arbitration Agreement*, 53 DEPAUL L. REV. 67 (2003). Additionally, she was a Top Scholar and honored with the CALI Award in Advanced Legal Research and Constitutional Law II.

RECENT PUBLICATIONS

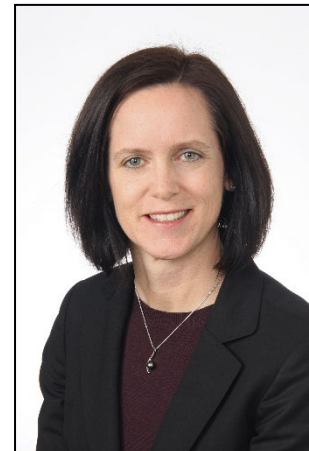
"Guide to the Open Meetings Act and FOIA," *Illinois Association of Park Districts* (2017)

"Buyer Beware – Construction Project and Contract Pitfalls," *Illinois Association of School Business Officials Magazine* (2017)

RECENT PRESENTATIONS

Navigating the Public Bidding and Contract Process, IAPD/IPRA Soaring to New Heights Conference (January 2020)

Legal/Legislative, Part II, IAPD/IPRA Soaring to New Heights Conference (January 2020)



PRACTICE AREAS

Construction Law

Park District Law

Real Estate Development

EDUCATION

J.D., DePaul University
College of Law, *summa cum laude*, Order of the Coif

B.A., Valparaiso University

ADMITTED TO PRACTICE

Supreme Court of Illinois

ORGANIZATIONS

Illinois State Bar
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Howard Metz counsels and represents school districts, community colleges, park districts and municipalities with respect to real estate, commercial transactions, construction law and land use and zoning matters. He has resolved construction cases involving issues such as disputed architectural fees, construction defects, bidding disputes and construction delays. Howard has also litigated issues involving zoning laws and municipal control over school property.



RECENT PUBLICATIONS

Contributing author, "Joint Purchasing Everything You Want to Know but Are Afraid to Ask!" *UPDATE Magazine*, Illinois ASBO (2019)

Contributing author, "Public Body Social Media Rules Make Retention, Ready Retrieval Imperative," *Chicago Daily Law Bulletin* (2019)

Contributing author, "How Far Does the Law Allow Schools to Go?" *UPDATE Magazine*, Illinois ASBO (2018)

Co-author, "School Construction from Start to Finish: A Project Checklist," *School Business Affairs Magazine*, ASBO (2018)

Contributing author, "Organization, Finance, and Property," *Illinois School Law*, IICLE (2017)

"Look Before You Leap: Evaluating Your Joint Purchasing Options," *UPDATE Magazine*, Illinois ASBO (2016)

Contributing author, "School Property and Environmental Issues," *Illinois School Law*, IICLE (2010 and 2012)

RECENT PRESENTATIONS

School Bidding, Procurement, and Prevailing Wages: From the Basics to the Advanced, IASA Spring Legal Seminar (March 2022)

Foolproof Contract that Abide by State Laws, 2019 Illinois ASBO Annual Conference (May 2019)

Construction Contracts: Boilerplate Language Landmines You May Not Know, NBI (February 2019)

PRACTICE AREAS

Commercial Transactions
Construction Law
Education Law
Finance
Municipal Law
Real Estate Development

EDUCATION

J.D., IIT Chicago-Kent
College of Law

B.S., University of Iowa

ADMITTED TO PRACTICE

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Supreme Court of Illinois