The Top Legal Cases of 2015 that Could Affect Your Municipality's Wallet

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Whether your municipality is the plaintiff/petitioner or defendant/respondent, litigation in and of itself can be very expensive. Add to that expense the many categories of Illinois laws that mandate a high level of expenditures, such as public employee pensions and benefits, workers' compensation, municipal liability, prevailing wages, and the Illinois Sunshine Laws. Then there is the judiciary that interprets these laws, and the legal interpretation can, and often does, expand the financial responsibilities of Illinois municipalities. This article will examine some of the recent cases that may have an impact on your municipality's bottom line.

PENSIONS

The costs associated with the unfunded mandates of public employee pensions and retiree healthcare benefits, of course, took the biggest hit in 2015 with the result of the case from the Illinois Supreme Court, *In re Pension Reform Litigation*.[1] This case was commonly referred to as the "Pension Case."

The Pension Protection Clause in the Illinois Constitution provides:

> Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.[2]

In an attempt to reduce Illinois' unfunded pension liability and address the state's plummeting credit ratings, among other things, the Illinois General Assembly passed, and former Governor Quinn signed into law, Public Act 98-599 (commonly referred to as Senate Bill 1). The Act had the effect of reducing the retirement annuity benefits for state employees who first became members of four of the state-funded pension systems prior to January 1, 2011 (Tier 1 members). The Illinois Supreme Court determined, however, that Senate Bill 1 violated the Pension Protection Clause.

Following its decision in *Kanerva v. Weems*,[3] the Illinois Supreme Court first determined that the Act violated the Pension Protection Clause because it had the direct effect of diminishing and impairing the retirement annuities of the Tier 1 members of the affected state retirement systems. According to the Court:

> Retirement annuity benefits are unquestionably a "benefit of contractually-enforceable relationship, resulting from membership" in the four state-funded retirement systems . . . The protections afforded to such benefits by the Pension Protection Clause attach once an individual first embarks upon employment in a position covered by a public retirement system, not when the employee ultimately retires . . . There is simply no way that the annuity reduction provisions in the Act can be reconciled with the rights and protections established by the people of Illinois when they ratified the Illinois Constitution of 1970 and its pension protection clause.[4]

The Court then rejected the state's affirmative defense that claimed reserved sovereign police powers to enact and enforce the Act. The state argued that funding for the pension systems and state finances in general have become so dire that the General Assembly was authorized, even compelled, to invoke its police powers to override the rights and protections afforded by the Pension Protection Clause in the interests of the greater public good. The Court rejected the state's contention because the authority cited by the state was under the Contract Clauses under the federal and state constitutions, not under the Pension Protection Clause. Moreover, the rights of a state to change its contractual obligations are questionable when, as here,

the state's self-interest is at stake. Furthermore, the General Assembly itself was largely responsible for the financial crisis that it has found itself in. Finally, the General Assembly cannot enact legislation that conflicts with provisions of the Illinois Constitution unless the constitution specifically grants it such authority, which it did not.

The Court determined that the invalid annuity reduction provisions of the Act were not severable from the remainder of the statute and, therefore, the entire statute was required to fall. According to the Court, these provisions were not merely central to the statute, they were its very reason for being. Severing these provisions while letting the remainder stand would yield a meaningless statute that no longer reflected the legislature's intent. In addition, the express terms of Section 97 of the Act declared many of the challenged provisions "inseverable" and dependent upon one another. Therefore, the entire Act had to be declared invalid.

Although the ruling has not yet been applied to the local level, the result of this case could guide municipalities looking at reforming local public pensions.

PSEBA

PSEBA (Public Safety Employees Benefits Act) is another unfunded mandate that can prove to be rather expensive to municipalities. As a result of three Illinois court decisions, it's going to get a bit more costly.

As relevant in these three cases, under Section 10 of PSEBA, disabled public safety employees are entitled to continue to receive health insurance benefits for themselves and their dependents provided (a) the employee suffered a catastrophic injury, and (b) the employee's injury resulted from responding to what he or she reasonably believed to be an emergency.[5]

Village of Vernon Hills v. Heelan[6]
The village's police pension board in this case awarded the defendant – a police officer – a line-of-duty disability pension after he showed that he suffered an on-the-job injury that rendered him unable to perform the necessary duties of a police officer. Thereafter, the village filed this complaint, seeking a declaratory judgment that it was not obligated under Section 10 of PSEBA to pay the health insurance premiums for him and his dependents. The village alleged that the defendant did not suffer a catastrophic injury, as required by Section 10(a), and that his injury did not result from a response to what the defendant reasonably believed to be an emergency, as required by Section 10(b). The defendant answered the complaint and filed a counterclaim, seeking a declaratory judgment that the village was obligated to provide health insurance benefits.

Pursuant to the Illinois Supreme Court's ruling in *Krohe v. City of Bloomington*[7] (which held that the term "catastrophic injury" was synonymous with a line-of-duty disability pension) and its progeny, the trial court prohibited the village from submitting any evidence attempting to show that the defendant was not catastrophically injured. The trial court determined that, pursuant to *Krohe*, the village was prohibited from denying that the defendant suffered a catastrophic injury because he was awarded a line-of-duty disability pension which, in and of itself, demonstrated that he suffered a catastrophic injury. In addition, the village conceded that Section 10(b) was satisfied, indicating that it no longer contested that the defendant was responding to what he reasonably believed to be an emergency when he was injured. With both Sections of the Act being satisfied, the trial court awarded the defendant PSEBA benefits.

Since the village conceded that the defendant satisfied Section 10(b) – the requirement that he was injured while responding to what he reasonably believed to an emergency – the only issue on appeal was whether the defendant suffered a catastrophic injury under Section 10(a). The defendant claimed that he satisfied Section 10(a) by virtue of having been awarded a line-of-duty disability pension. The appellate court agreed.

The appellate court determined that it was undisputed that the board awarded the officer a line-of-duty disability pension. Therefore, because of the ruling in *Krohe*, it was an uncontroverted fact that he was catastrophically injured for purposes of Section 10(a). In addition, where it is uncontroverted that a line-of-duty disability pension was awarded, Section 10(a) is satisfied, and there is no need to engage in discovery or present evidence regarding the defendant's injury. Thus, the appellate court agreed with the defendant that he satisfied the catastrophic injury requirement in Section 10(a) by virtue of having been awarded a line-of-duty disability pension and, therefore, the village was prohibited from offering evidence that the officer suffered a catastrophic injury.

The Illinois Supreme Court affirmed the decision of the appellate court in regard to the village's ability (or inability) to challenge the "catastrophic injury" determination under the exact same reasoning. As a result, the Court ruled that the village was obligated, under Section 10 of PSEBA, to provide health insurance benefits to the police officer, and, even though the village had no legal right to intervene at the PSEBA hearing before the pension board, the village was prohibited from challenging the catastrophic injury determination once he was awarded a line-of-duty disability pension by the village's police pension board.

In *Bremer v. City of Rockford*,[8] the result was the same for firefighters under Section 4-110.1 of the Pension Code[9] before the Illinois Appellate Court. The court ruled in this case that the Supreme Court's ruling in *Krohe*[10] and the appellate court's

IML LEGAL BRIEF CONTINUES ON PAGE 22

subsequent ruling in *Richter v. Village of Oak Park*,[11] dictated that when a firefighter is awarded a line-of-duty disability because he is permanently disabled to perform his duties as a firefighter, he is catastrophically injured within the meaning of PSEBA. This reasoning is the same for line-of-duty disabilities awarded to firefighters under Section 4-110.1.

In *Vaughn v. City of Carbondale*,[12] the Illinois Appellate Court held the same. According to the court, the city was not entitled to the complete dismissal of a police officer's claim for permanent PSEBA benefits because (1) the officer was catastrophically injured, as he was currently receiving a line-of-duty disability pension; and (2) the officer's injury occurred as the result of his response to what he reasonably believed to be an emergency when he hit his head on the door frame of his squad car as he was reaching to retrieve his portable radio to respond to a call from police dispatch. The Illinois Supreme Court granted the city's petition for leave to appeal in this case to examine whether Vaughn reasonably believed he was responding to an emergency when his injury occurred.

VIDEO GAMING

A bit of good news for home rule units regarding fees imposed upon video-gaming machines. The Illinois Appellate Court recently issued three opinions upholding a home rule unit's regulation and fees for video-gaming machines. In *Midwest Gaming and Entertainment, LLC v. Cook County*,[13] the appellate court ruled that the county's tax ordinance upon "gambling machines" was not preempted by state law because the ordinance pertained to the county's local government and affairs as a home rule unit and the General Assembly did not expressly preempt home rule authority in the Video Gaming Act.[14] The ordinance also did not violate the Illinois Constitution because the county had the statutory authority to impose the tax, the requirements under the ordinance did not convert the tax into a license for revenue, and the ordinance did not violate the Uniformity Clause of the Illinois Constitution.[15]

Following its decision in *Midwest Gaming*, the appellate court affirmed the dismissal of a complaint against the Village of Elmwood Park – a home rule unit – for its licensing fees upon video-gaming devices. In *Accel Entertainment Gaming, LLC v. Village of Elmwood Park*,[16] the appellate court determined that the village's licensing structure of video-gaming machines within the village's boundaries was legally permissible because (1) video-gaming pertains to the village's local government and affairs and the state statute did not expressly preempt home rule regulation in this area; and (2) the $1,000 license fee for each device was not an impermissible occupation tax, preempted by Section 21 of the Riverboat Gambling Act,[17] or an impermissible license for revenue.

Also subsequent to the decision in *Midwest Gaming*, in *Illinois Coin Machine Operators Assoc. v. Cook County*,[18] the appellate court upheld the county's tax ordinance upon video-gaming devices because (1) the ordinance was not preempted by the Video Gaming Act; (2) the ordinance pertained to the county's government and affairs; (3) the tax was specifically authorized by Section 5-1009 of the Counties Code;[19] and (4) the tax was not an impermissible license for revenue.

CONCLUSION

Overall, 2015 court opinions effectuated both revenue gains and losses for municipalities. While pension costs and PSEBA benefits continue to plague municipal revenues, home rule communities can see some possible revenue enhancements by way of fees on video-gaming devices. Here's hoping that 2016 will continue this positive trend.

[1] 2015 IL 118585 (May 8, 2015).
[2] Ill. Const. of 1970 art. XIII, Section 5.
[3] 2014 IL 115811 (July 3, 2014).
[4] 2015 IL 118585 ¶ 47.
[5] 820 ILCS 320/10.
[6] 2015 IL 118170 (September 24, 2015).
[7] 204 Ill. 2d 392 (2003).
[8] 2015 IL App (2d) 130920 (April 27, 2015).
[9] 40 ILCS 5/4-110.1.
[10] *See supra*, note 7.
[11] 2011 IL App (2d) 100114.
[12] 2015 IL App (5th) 140122 (March 25, 2015).
[13] 2015 IL App (1st) 142786 (August 21, 2015).
[14] 230 ILCS 40/.
[15] Ill. Const. 1970, art. IX, § 2.
[16] 2015 IL App (1st) 143822 (December 11, 2015).
[17] 230 ILCS 10/21.
[18] 2015 IL App (1st) 150547 (December 11, 2015).
[19] 55 ILCS 5/5-1009.