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School Property and Environmental Issues

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I. INTRODUCTION

A. [7.1] Scope of Chapter

This chapter provides an overview of the statutes and court decisions that affect the ownership, title-holding, acquisition, improvement, control, use, and disposition of real school property and environmental concerns unique to educational institutions. The focus of this chapter is on Illinois public school districts with a population of fewer than 500,000 inhabitants. The Chicago Public Schools are controlled by Article 34 of the School Code, 105 ILCS 5/34-1, *et seq.*, which governs districts with a population exceeding 500,000 inhabitants.

B. [7.2] Nature of School Property

Generally, public school property must be acquired and used for school purposes. The acquisition and disposition of school property have, on occasion, been contrary to general real estate principles and the statutory requirements applicable to public schools. Deeds and easements have gone unrecorded. Surveys have been misplaced. Documents of historical significance have been lost in the school's archives. Schools have been built on property other than that owned by the school district. School property has been sold when previous conveyances had not been recorded. Outstanding taxes on acquired property have not been properly paid. All of this underlines the necessity of proper action when dealing with public school property. Transactions concerning school property are strictly controlled by statute.

II. OWNERSHIP OF AND TITLE TO SCHOOL PROPERTY

A. [7.3] Ownership

It is well established that property acquired, used, and disposed of by a school district is actually property ultimately subject to control by the State of Illinois:

The “property of the school district” is a phrase which is misleading. The district owns no property, all school facilities, such as grounds, buildings, equipment, etc., being in fact and law the property of the State and subject to the legislative will.
Pritchett v. County Board of School Trustees, 5 Ill.2d 356, 125 N.E.2d 476, 478 (1955).

While the state technically owns all school property, it does not acquire, hold title to, or dispose of this property because the legislature has granted this authority to school and college districts.

B. [7.4] Title

Title to school sites and buildings is held by one of several corporate entities, depending on where the property is situated. The territory in each county, except any school district governed by a special act that requires the district to appoint its own treasurer, constitutes a county school unit. County school units of fewer than two million inhabitants (all counties except Cook County) are known as Class I county school units. County school units of two million or more inhabitants (Cook County) are known as Class II county school units. 105 ILCS 5/5-1(a).

Title to school sites and buildings in Class I county school units formerly vested in the Regional Board of School Trustees is now vested by operation of law in the school board of the district. Each board of education is statutorily vested with the responsibility of administering school property. The board of education controls the acquisition, use, and disposition of the property. 105 ILCS 5/5-1(c)(4).

In Class II county school units, title to school sites and buildings is vested in the township school trustees. 105 ILCS 5/5-1. However, Class II county school units may hold title to district property under certain circumstances. For example, if by referendum the township trustees are abolished, title to district property is transferred to the district. 105 ILCS 5/5-1(c).

Two or more school districts may take title to property upon acquisition of necessary facilities pursuant to a joint agreement in accordance with the School Code. 105 ILCS 5/10-22.31, 5/16-2.

All public school districts may take and also convey title to real estate in their own name to be improved by structures for vocational or other educational training. 105 ILCS 5/10-23.3. Any public school district may hold title to real or personal property acquired by grant, gift, donation, devise, or bequest. 105 ILCS 5/16-1.

III. ACQUISITION

A. [7.5] Authority To Acquire

School boards have express and implied powers to acquire property for school purposes with or without the owner's consent by condemnation or otherwise. 105 ILCS 5/10-22.35A. The scope of authority for Illinois school boards has been defined as substantial. School boards have authority to acquire land sufficient not only for present needs but for future requirements that they could and should anticipate. *Mattion v. Trustees of Schools of Township 41 North Range 12*, 2 Ill.App.3d 1035, 279 N.E.2d 66, 69 (1st Dist. 1971).

B. [7.6] Purpose of Acquisition

School boards have authority to buy sites or buildings necessary for school purposes. 105 ILCS 5/10-22.35A. School purposes have been broadly construed. In *Mahrenholz v. County Board of School Trustees of Lawrence County, Illinois*, 125 Ill.App.3d 619, 466 N.E.2d 322, 80 Ill.Dec. 870 (5th Dist. 1984), the court held that the term "school purpose" does not require the actual holding of classes but that some alternate use within the realm of school purpose is permissible. See also *Wauconda Community Unit School District No. 118, Lake County, Illinois v. LaSalle National Bank*, 143 Ill.App.3d 52, 492 N.E.2d 995, 97 Ill.Dec. 336 (2d Dist. 1986).

Generally, the school sites purchased must be within the boundaries of the purchasing district. However, the School Code does permit a district having 100,000 or more inhabitants to purchase a site in another school district that does not maintain a recognized public high school for the

purpose of providing high school education provided that the site lies within two miles of the purchasing district's boundaries. 105 ILCS 5/10-23.6. The School Code permits the purchase or leasing of facilities outside the district but within Illinois or adjacent states for purposes of outdoor education. 105 ILCS 5/10-22.29.

School districts may enter into joint agreements to acquire, build, establish, and maintain sites and buildings within the joint agreement area, even though the property is not necessarily within the area of a participating school district, for purposes of vocational or special education. 105 ILCS 5/10-22.31b.

C. [7.7] Manner of Acquisition

School districts are authorized to acquire property in a variety of ways. As indicated in §7.4 above, school districts may accept grants, gifts, donations, or legacies (105 ILCS 5/16-1), lease sites for school or administrative purposes (105 ILCS 5/10-22.12), buy sites and facilities for school purposes and school offices (105 ILCS 5/10-22.35A), take a site for a building for school purposes by condemnation (*id.*), enter into an option to purchase a site or sites and facilities for school offices (*id.*), or purchase such sites or facilities by contract or deed (*id.*).

School districts may also acquire real estate pursuant to the Local Government Property Transfer Act, 50 ILCS 605/0.01, *et seq.* Pursuant to §11-78-1 of the Illinois Municipal Code, 65 ILCS 5/1-1-1, *et seq.*, school districts may receive real or personal property that has been conveyed to an incorporated city or village for school purposes.

School districts may acquire property dedicated by land developers to municipalities pursuant to an ordinance that requires land developers to contribute cash or land for schools and parks as part of a comprehensive plan. In *Krughoff v. City of Naperville*, 41 Ill.App.3d 334, 354 N.E.2d 489 (2d Dist. 1976), *aff'd*, 68 Ill.2d 352 (1977), the court, relying not on home-rule power but on the Illinois Municipal Code, upheld such an ordinance.

A contract between a school board and a subdivider to erect a school building with the subdivider paying a part of the construction costs is a valid and enforceable agreement. *Board of Education of Community Consolidated School District No. 59 of Cook County, Illinois v. E.A. Herzog Construction Co.*, 29 Ill.App.2d 138, 172 N.E.2d 645 (1st Dist. 1961). *See also Board of Education of School District No. 68, DuPage County v. Surety Developers, Inc.*, 24 Ill.App.3d 638, 321 N.E.2d 99 (2d Dist. 1974).

1. [7.8] Condemnation

School districts may use condemnation proceedings to acquire property for any educational purpose including, but not limited to, warehouse and administrative facilities. 105 ILCS 5/10-22.35A, 5/16-6. Condemnation proceedings may be initiated by school districts under a joint building program pursuant to an intergovernmental cooperative agreement. 105 ILCS 5/10-22.31b.

The manner of acquisition of school property, by condemnation or agreement of the owner, may determine a district's future sale of the property. Illustrative of this is *Mattion v. Trustees of Schools of Township 41 North Range 12*, 2 Ill.App.3d 1035, 279 N.E.2d 66 (1st Dist. 1971), in which the school board filed a condemnation suit when the owner of a plot of land ignored the board's offer to purchase. Before the suit was resolved, the owner agreed to sell the property. The school board kept the property for five years without improving it. The board then sold the property at a profit after deciding changes in student population made the acquisition unnecessary. The former owner of the property asked the court to order the land returned to him at the original price. The court refused to do so because the school board held fee title to the property and the board had not acquired the land by eminent domain; therefore, the deed did not contain a condition or reverter provision.

Title acquired by a condemnation action is a determinable fee. Accordingly, when property is abandoned to meet school needs, the title reverts to the successor in title of the person who owned the property at the time of the condemnation action, unless the right of reversion has been extinguished by statute. *Kelly v. Bowman*, 104 F.Supp. 973 (E.D.Ill. 1952), *aff'd*, 202 F.2d 275 (7th Cir. 1953); *Blackert v. Dugosh*, 12 Ill.2d 171, 145 N.E.2d 606 (1957).

Most condemnation litigation concerns disputes over the amount of compensation to be paid to the owner. In *Board of Junior College District No. 515 v. Wagner*, 3 Ill.App.3d 1006, 279 N.E.2d 754 (1st Dist. 1971), the court held that the fair market value of land acquired for school purposes was established by competent evidence. This evidence included an appraiser's testimony concerning the likelihood of zoning changes in the near future. *See also Department of Public Works & Buildings v. Association of Franciscan Fathers of State of Illinois*, 44 Ill.App.3d 49, 360 N.E.2d 70, 4 Ill.Dec. 323 (2d Dist. 1976).

If an owner objects to the amount of the condemnation award, the award is not final until the appeal is decided. Therefore, failure to deposit the amount of the award within the time specified in the judgment is not an abandonment of the condemnation proceedings. *City of Chicago in Trust for Use of Schools v. Albert J. Schorsch Realty Co.*, 6 Ill.App.3d 1074, 287 N.E.2d 93 (1st Dist. 1972), *overruling recognized*, *Illinois State Toll Highway Authority v. Heritage Standard Bank & Trust Co.*, 157 Ill.2d 282, 626 N.E.2d 213, 219 – 220, 193 Ill. Dec. 180 (1993).

If the court order awarding property to the condemnor does not place a limitation on the title to the property and makes no reference to a reversionary interest in the condemnee, the order awarding the property to the regional board of school trustees is in fee simple absolute, and it cannot be attacked on appeal for the first time. *LaSalle National Bank v. County Board of School Trustees of DuPage County*, 23 Ill.App.3d 575, 319 N.E.2d 593 (2d Dist. 1974), *aff'd*, 61 Ill.2d 524 (1975), *cert. denied*, 96 S.Ct. 1668 (1976).

A school board may condemn property to use it as a school site without the approval of district voters for the construction of a building on the site. 105 ILCS 5/10-22.35A; *LaSalle, supra*.

2. [7.9] Referendum Requirements

The School Code sets forth the circumstances by which a school district may acquire and construct school buildings with or without approval by voters via a referendum. 105 ILCS 5/10-22.36. The general rule is that school districts must obtain voter approval via a referendum to build or purchase a building for school classroom or instructional purposes. If the building will be for school offices, voter approval is not required under §10-22.36. Other exceptions to the general referendum requirements under §10-22.36 include if the purchase, construction, or building of any such building is completed (a) while the building is being leased by the school district; or (b) with the expenditure of funds (1) derived from the sale or disposition of other buildings, land, or structures of the school district, or (2) funds received as a grant under the School Construction Law, 105 ILCS 230/5-1, *et seq.*, or as gifts or donations, provided that no funds to complete the building, other than lease payments, are derived from the district's bonded indebtedness or the tax levy of the district.

3. [7.10] Lease

School districts may lease any buildings, rooms, grounds, and appurtenances to be used for school purposes for a period not exceeding 99 years. 105 ILCS 5/10-22.12. However, a two-thirds vote of the full membership of the school board is necessary for making, receiving, or altering leases in excess of ten years. *Id.*

D. [7.11] Financing the Acquisition

School districts have authority to levy a tax (105 ILCS 5/17-2, 5/17-2.2, 5/17-5) and issue bonds (105 ILCS 5/19-2, 5/19-7) for the purpose of acquiring property or improving the property. However, education fund proceeds levied under §17-2 are generally not used for school construction purposes.

In addition to this traditional method of financing acquisition of school sites and buildings, school districts have authority to contract for deed, with the limitations that this contract not exceed ten years in length and the interest on the unpaid balance not exceed six percent. 105 ILCS 5/10-22.35A. Additionally, the omnibus interest rate provisions of §2 of the Bond Authorization Act, 30 ILCS 305/2, are applicable to a contract for deed.

School districts primarily finance construction of new school buildings through a capital improvements fund tax levy for buildings (105 ILCS 5/17-2.3), a special education programs tax (105 ILCS 5/17-2.2a), a vocational education building tax (105 ILCS 5/17-2.4), or the bonding authority established by Article 19 of the School Code (105 ILCS 5/19-1, *et seq.*). Existing school facilities are improved and maintained through use of the operations and maintenance fund tax levy. 105 ILCS 5/17-7.

School districts are permitted to deposit state aid payments in any fund from which expenditures can be made. 105 ILCS 5/18-8.05(A)(4). P.A. 90-548, which added §18-8.05, repealed §18-8 of the School Code, effective July 1, 1998. Thus, school property improvements may be financed through state aid although it is normally used to operate schools.

The School Construction Law provides an additional source of funding for school construction projects. School districts may apply for construction grants for the following purposes:

- (1) Replacement or reconstruction of school buildings destroyed or damaged by flood, tornado, fire, earthquake, mine subsidence, or other disasters, either man-made or produced by nature;**
- (2) Projects designed to alleviate a shortage of classrooms due to population growth or to replace aging school buildings;**
- (3) Projects resulting from interdistrict reorganization of school districts contingent on local referenda;**
- (4) Replacement or reconstruction of school facilities determined to be severe and continuing health or life safety hazards;**
- (5) Alterations necessary to provide accessibility for qualified individuals with disabilities; and**
- (6) Other unique solutions to facility needs. 105 ILCS 230/5-30.**

Under §40 of the School Construction Law, if a school district first applied for a construction grant on or after July 1, 2007, but before July 1, 2009, the school construction project must (1) receive certification from the United States Green Building Council's Leadership in Energy and Environmental Design Green Building Rating System, or (2) receive certification from the Green Building Initiative's Green Globes Green Building Rating System, or (3) meet green building standards of the Capital Development Board and its Green Building Advisory Committee. 105 ILCS 230/5-40.

P.A. 96-0037, enacted July 13, 2009, amended §40 of the School Construction Law. With respect to school construction projects for which a school district first applies for a construction grant on or after July 1, 2009, the school construction project must receive silver certification from the United States Green Building Council's Leadership in Energy and Environmental Design Green Building Rating System. 105 ILCS 230/5-40.

School boards may also levy a tax up to 0.05 percent on the value of the taxable property as equalized or assessed by the Department of Revenue for the purpose of leasing educational facilities or computer technology or both. 105 ILCS 5/17-2.2c. This amount may be increased to 0.10 percent upon approval by the voters. *Id.* School districts have successfully financed new school buildings or additions by means of a lease-purchase agreement. See 105 ILCS 5/10-22.12.

IV. CONTROL AND USE

A. [7.12] Statutory Provisions

School boards have control and supervision of all public schoolhouses in their districts. 105 ILCS 5/10-22.10. A school board has wide discretion in the exercise of this power. *People of State of Illinois ex rel. McCollum v. Board of Education of School District No. 71*, 396 Ill. 14, 71 N.E.2d 161 (1947), *rev'd on other grounds*, 68 S.Ct. 461 (1948). The school board's control and supervision extend to the use of its buildings and property by students and staff, prohibiting access to school facilities by unauthorized persons, and granting use of its buildings and grounds to third parties under certain conditions.

Teachers are under a duty to see that the property of a district under their care and control is not unnecessarily damaged or destroyed. 105 ILCS 5/24-17. Teachers and other employees may request any person entering a public school building or grounds to identify himself or herself and provide the purpose of the entry. Refusal to provide this information is a Class A misdemeanor. 105 ILCS 5/24-25. "Every trespasser upon common school lands is guilty of a petty offense and shall be fined 3 times the amount of the injury occasioned by the trespass." 105 ILCS 5/15-5.

Under §21-4(1) of the Criminal Code of 1961, 720 ILCS 5/21-4(1), criminal damage to government supported property is

a Class 4 felony when the damage to property is \$500 or less, and any such act is a Class 3 felony when the damage to property exceeds \$500 but does not exceed \$10,000; a Class 2 felony when the damage to property exceeds \$10,000 but does not exceed \$100,000, and a Class 1 felony when the damage to property exceeds \$100,000.

When the damage to the property exceeds \$10,000, the court shall impose a fine equal to the value of the damage to the property. 720 ILCS 5/21-4(2). "Government supported property" is any property supported in whole or in part with state funds, funds of a unit of local government or school district, or federal funds administered or granted through state agencies. 720 ILCS 5/21-4(1)(a).

Criminal trespass to state supported land is a Class A misdemeanor. "State supported land" is land or any building on such land that is supported in whole or in part with state funds or federal funds administered or granted through state agencies. 720 ILCS 5/21-5(a). *See People v. Spencer*, 131 Ill.App.2d 551, 268 N.E.2d 192 (1st Dist. 1971); *People v. Mims*, 8 Ill.App.3d 32, 288 N.E.2d 891 (1st Dist. 1972).

In *People v. Thompson*, 56 Ill.App.3d 557, 372 N.E.2d 117, 14 Ill.Dec. 312 (3d Dist. 1978), the appellate court upheld the defendants' convictions for criminal trespass when the defendants refused to leave school property after being requested to do so by the district. In *Thompson*, the defendants attended a public meeting of the Peoria Board of Education held at a district administration building. The defendants remained in the building and refused to leave after the conclusion of the meeting, claiming that they had not been given the opportunity to address the

board and asserting a violation of their First Amendment rights. The court held that as owner of the building, the district had the right to ask the defendants to leave the premises, that the superintendent as agent of the board had authority to give notice to the defendants to depart, and that the request made by the superintendent was reasonable. Accordingly, the defendants were properly convicted for criminal trespass to school property.

The Equal Access Act, 20 U.S.C. §4071, *et seq.*, prohibits public high schools from discriminating against or denying equal access to school facilities for students to conduct religious, political, or philosophical meetings if the school receives federal financial aid and has a limited open forum.

The Equal Access Act defines a “limited open forum” as “an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time.” 20 U.S.C. §4071(b). If the district has an open forum, then it must afford an opportunity for all such groups to use school premises. Meetings must be voluntary and student-initiated and not sponsored by nonstudents. Faculty can attend only in a nonparticipatory capacity. Nonstudents cannot direct, conduct, control, or regularly attend meetings of student groups. 20 U.S.C. §4071(c).

School boards are authorized to grant to third parties temporary use of school buildings, grounds, assembly halls, and classrooms when not occupied or otherwise needed for school purposes, under such provisions and control as they see fit to impose. 105 ILCS 5/10-22.10. Under such license agreements with third parties, school facilities, including heat, light, and attendants, may be used for religious meetings, Sunday school, evening school, literary societies, public lectures, concerts, and other educational, recreational, social, or civic activities as the board deems proper. *Id.*

The legislature expressly encourages school boards to allow community organizations to use school facilities during nonschool hours. 105 ILCS 5/10-20.41, 5/34-18.35. If the board allows a community organization to use school facilities during nonschool hours, the board must adopt a formal policy governing such use. This policy shall prohibit such use if it interferes with any school functions or the safety of students or school personnel or if it affects the property or liability of the school district. *Id.*

School boards also may grant longer term use of its property to third parties through lease agreements when use of the property will not be needed by the district during the terms of the lease agreement. 105 ILCS 5/10-22.11. School property may be leased to another school district, municipality, or other public body for a term not to exceed 25 years. 105 ILCS 5/10-22.11(a). School buildings and land may be leased to suitable lessees for educational purposes, or for any other purpose that serves the needs of the community, for a term not to exceed 25 years, when the property is declared by the board to be unnecessary, unsuitable, or inconvenient for the uses of the district during the term of the lease, and when the board finds that the best interests of the residents of the school district will be enhanced by entering into the lease. 105 ILCS 5/10-22.11(c).

In leasing its property to a third party, a school board may impose a charge to cover the incidental expenses related to granting use of school facilities including, but not limited to,

general liability and property insurance and reasonable charges for maintenance and depreciation of the buildings and land. *Id.*; *Lincke v. Moline Board of Education*, 245 Ill.App. 459 (2d Dist. 1927). If such a charge is levied, it should be done uniformly and pursuant to a policy adopted by the board of education.

In considering the use of school property by student groups and third parties, school districts should also be aware that the Religious Freedom Restoration Act, 775 ILCS 35/1, *et seq.*, prohibits any state agency or official, including any person acting under color of state law, from substantially burdening a person's exercise of religion unless it demonstrates a compelling governmental interest and that it has employed the least restrictive means of furthering this compelling governmental interest.

B. [7.13] Zoning Ordinances

Zoning ordinances and health and safety regulations pose problems of intergovernmental relationships and present issues regarding other governmental entities' authority to regulate certain aspects of school construction projects. The analysis depends on the location and proposed use of the project, as well as the impact the project might have on surrounding property.

Municipalities are not empowered to use their zoning authority to control the school district's overall use of its property or to thwart the school district in carrying out its statutorily mandated functions in that school districts are bodies politic and corporate created by the School Code. The Illinois Supreme Court has held that because school districts are creatures of the legislature, no other public entity may place limitations or restrictions on a school district unless expressly authorized by statute. *Board of Education of School District No. 150 v. City of Peoria*, 76 Ill.2d 469, 394 N.E.2d 399, 31 Ill.Dec. 197 (1979); *People v. Deatherage*, 401 Ill. 25, 81 N.E.2d 581 (1948).

In *Board of Education of School District No. 150*, the school district prevailed in challenging the city's authority to require the school district to collect and remit certain taxes. The court held that pursuant to constitutional mandate, the legislature exercises exclusive control over the Illinois school system and, as such, no local governmental entity is permitted to exercise control over, or impose a burden on, a public school district. 394 N.E.2d at 402 – 403.

Proponents of local municipal control sometimes rely on *Wilmette Park District v. Village of Wilmette*, 112 Ill.2d 6, 490 N.E.2d 1282, 96 Ill.Dec. 77 (1986), for the proposition that a home-rule municipality may be able to place a reasonable restriction on the use of property by another governmental entity. In *Wilmette Park District*, the court found that the village could require the park district to seek a special-use permit in order to install light standards to facilitate night baseball in one of its parks. The court reasoned that since neither the Illinois Municipal Code nor the Park District Code, 70 ILCS 1205/1-1, *et seq.*, provided the park district with zoning immunity, no immunity existed, and, therefore, the park district was obligated to pursue a special-use permit subject to ultimate judicial review of the municipality's actions. However, the court suggested that if the village's actions were deemed unreasonable, arbitrary, discriminatory, or otherwise were deemed an abuse of its zoning power to thwart or frustrate the park district's statutory duties, appropriate corrective action would be taken.

By analogy, one might argue that without express zoning immunity, schools are subject to reasonable zoning restrictions — that is unless the imposed zoning restrictions frustrate the performance of the school district’s statutory duties. Accordingly, while the holding in *Wilmette Park District* does not involve a school district, it leaves open the possibility that as long as the municipality is not acting in an unreasonable or arbitrary manner and the restriction does not thwart the school district’s statutory purpose, some municipal control may be enforceable.

There are some aspects of school construction in which a municipality will have more control in the process. For example, a municipality’s ordinances are likely to be held enforceable as to aspects of school construction projects that directly impact the surrounding property. These areas include regulation of access to public roadways from school property and storm-water runoff from school property. In these cases, the municipality can require the school district to obtain either an access permit or submit the storm-water plan for municipal approval.

Almost all municipal zoning ordinances contain regulations regarding the location of schools. Before a school district purchases or accepts property for a school facility, it should consider whether the site is opposed by the municipality. Even though the district may be likely to prevail in a suit over the right to construct a school building on its property, advance discussion with the host municipality and review of the municipality’s zoning plan and ordinances may help to avoid a lengthy court proceeding in the matter. Moreover, from a political standpoint, fostering a cooperative relationship with the district’s host municipality can yield tangible benefits. However, if the school district decides voluntarily to cooperate with the municipality’s ordinances or any of its codes, the district should stipulate that this compliance or cooperation is strictly voluntary so as not to waive its right not to comply with any potentially objectionable local ordinances.

C. [7.14] Local Building Codes

The Illinois legislature has full authority to dictate the means and methods for school construction projects. The legislature has done so through the State Board of Education, which promulgated the Health/Life Safety Code for Public Schools, 23 Ill.Admin. Code pt. 180. The Health/Life Safety Code is the governing authority for all public school projects and establishes minimum standards for the construction and rehabilitation of school facilities in order to protect the health and safety of pupils.

The specific building construction provisions set out in the School Code must prevail over the more general powers granted to the municipality. *Board of Education, School District 33, DuPage County v. City of West Chicago*, 55 Ill.App.2d 401, 205 N.E.2d 63 (2d Dist. 1965). The Health/Life Safety Code preempts the local building code to the extent that they conflict. *See also County of Lake v. Board of Education of Lake Bluff School District No. 65, Lake County*, 325 Ill.App.3d 694, 761 N.E.2d 163, 260 Ill.Dec. 319 (2d Dist. 2001).

In *City of West Chicago, supra*, the court addressed the issue of whether in constructing a school building the school district was bound by municipal building ordinances. The court found that although the legislature delegated to the corporate authorities of each municipality the right

to regulate construction through building codes, the legislature also created the Health/Life Safety Code for Public Schools to specifically address the construction of school buildings:

[T]he Legislature has spoken generally in one instance, by giving municipalities the power to enact building codes, and particularly in another instance, by setting forth certain standards for health and safety relative to the construction of school buildings. “A familiar rule of statutory construction is that, where there are two statutory provisions, one of which is general and designed to apply to cases generally, and the other of which is particular and relates only to one subject, the particular provision must prevail, and must be treated as an exception to the general provision.” 205 N.E.2d at 65, quoting *DeWitt County v. Greene*, 320 Ill. 491, 151 N.E. 372, 373 (1926).

Additionally, the regulations of the State Fire Marshal do not apply to schools. In *Board of Education of Minooka Community High School District No. 111, Grundy, Kendall & Will Counties v. Carter*, 119 Ill.App.3d 857, 458 N.E.2d 50, 52 – 53, 75 Ill.Dec. 882 (3d Dist. 1983), the court held that the applicable rules and regulations for fire safety were those of the State Board of Education Health/Life Safety Code rather than the State Fire Marshal’s “Grey Book.” Pursuant to the School Code, local fire departments, fire protection districts, and the Office of the State Fire Marshal can conduct fire safety checks in public schools. 105 ILCS 5/2-3.12. However, these inspections must be based on the provisions of the Health/Life Safety Code and not on local building codes. In addition, §3-14.20 of the School Code allows local fire officials to review plans and specifications for school construction or alterations to determine if any violations of the Health/Life Safety Code exist. 105 ILCS 5/3-14.20. Fire officials have 15 days to review and comment on the plans and must conduct the review at no cost to the school district. *Id.*

The county health department has been found to have jurisdiction to inspect and regulate food service operations in schools because no school regulation specifically addresses food handling. *County of Winnebago v. Davis*, 156 Ill.App.3d 535, 509 N.E.2d 143, 108 Ill.Dec. 717 (2d Dist. 1987).

D. [7.15] Cleaning and Maintenance of School Facilities

The Green Cleaning Schools Act, 105 ILCS 140/1, *et seq.*, authorizes the Illinois Green Government Coordinating Council (IGGCC) to establish and amend on an annual basis guidelines and specifications for environmentally sensitive cleaning and maintenance products for use in school facilities. 105 ILCS 140/15. The Act requires all elementary and secondary public schools and all elementary and secondary nonpublic schools with 50 or more students to establish a green cleaning policy and exclusively purchase and use environmentally sensitive cleaning products pursuant to the IGGCC’s guidelines and specifications, when the adoption of such a policy is economically feasible. 105 ILCS 140/10.

V. UNDERGROUND STORAGE TANK REGULATIONS

A. Federal Regulation of USTs

1. [7.16] In General

The Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub.L. No. 98-616, 98 Stat. 3221, provide for a comprehensive regulatory program for underground storage tanks (USTs). Title VI of the HSWA applies to USTs containing “regulated substances,” which are defined as petroleum and hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §9601, *et seq.* See 42 U.S.C. §6991(2); 40 C.F.R. pt. 302. The HSWA required all owners of regulated USTs to notify the designated state agency by May 8, 1986, of the existence of the UST. 42 U.S.C. §6991a. Notification was to include age, size, type, location, and use of both operating USTs and USTs taken out of operation after January 1, 1974. USTs taken out of operation before January 1, 1974, are not subject to this requirement. 42 U.S.C. §6991a(a). The United States Environmental Protection Agency promulgates regulations for tank performance and management and financial responsibility standards. 40 C.F.R. pt. 280.

2. [7.17] Petroleum UST Regulations

Petroleum underground storage tanks existing before 1988 must have met corrosion protection and spill-overflow prevention requirements by 1998. 40 C.F.R. §280.21. Leak detection requirements were phased in for existing USTs, depending on their age. The phase-in deadlines ranged from December 1989 for tanks installed before 1965 to December 1993 for tanks installed between 1980 and 1988. The schedule was intended to guarantee that old USTs, which would tend to leak more than new USTs, had protection equipment installed first. Existing USTs that were unable to meet the deadlines were required to be closed in accordance with closure and corrective action requirements. Petroleum USTs installed after 1988 must be installed by qualified contractors who follow industry codes concerning excavation, setting, assembly, backfilling, and grading. In addition, spill and overflow, corrosion, and lead detection technologies must be installed. 40 C.F.R. §280.20.

An owner or operator of a UST must take action if there is a leak or spill. The owner must notify regulatory authorities, investigate the extent of the leak, ensure that the leak or spill poses no immediate threat to human health and safety, and report the effectiveness of cleanup measures. 40 C.F.R. §§280.61 – 280.66.

If an owner decides to close a UST, the owner must notify the regulatory agency, investigate the soils around the tank, and remove or properly seal the tank in-ground. 40 C.F.R. §280.71. Tanks not used for three to twelve months may be temporarily closed. 40 C.F.R. §280.70.

B. State Regulation of USTs

1. [7.18] Registration Requirements

State regulations pertaining to underground storage tanks may require remedial action for certain tanks located on a school district's or community college's property. These regulations, found at 41 Ill.Admin. Code pt. 170 and 35 Ill.Admin. Code pt. 731, define an "underground storage tank system" as any single tank or "combination of tanks (including underground pipes, ancillary equipment and cathodic protection connected thereto) used to contain an accumulation of regulated substances, and the volume of which . . . is 10 percent or more beneath the surface of the ground." 41 Ill.Admin. Code §170.400. The regulations required all underground tank owners to register their tanks with the Office of the State Fire Marshal "immediately" and to comply with most other applicable regulatory requirements by 1998. 41 Ill.Admin. Code §170.440. Commencing on April 1, 1995, any person who sells a new or recertified tank, intended to be used as a UST, must notify the purchaser of the owner's statutory notification obligations. 41 Ill.Admin. Code §170.440(h).

2. [7.19] Release Detection Requirements

In addition to registration requirements, underground storage tank owners or operators must provide release detection. Detailed release detection regulations can be found at 41 Ill.Admin. Code §§170.520 and 170.530. "Release" is defined as "any spilling, overfilling, leaking, emitting, discharging, escaping, leaching, or disposing from a UST into groundwater, surface water, or subsurface soils." 41 Ill.Admin. Code §170.400. Certain tanks are exempt from the release-detection regulations. These include tanks containing heating oil of 1,100 gallons or less, tanks with total volume less than 110 gallons, septic tanks, and tanks abandoned by filling with inert material in the manner prescribed by the State Fire Marshal.

The regulations require that releases due to spilling or overfilling do not occur. 41 Ill.Admin. Code §170.450. "Overfill release" is defined as "a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment." 41 Ill.Admin. Code §170.400. Spill release usually occurs at the fill pipe opening of a tank when a delivery truck's hose is disconnected from the fill pipe while product continues to exit the hose, resulting in a discharge of the regulated substance to the environment. *Id.* Owners or operators must report, investigate, and clean up any spills and overfills in accordance with the requirements found at 41 Ill.Admin. Code §170.590.

3. [7.20] Abandoned Tank Requirements

"Abandonment" means the permanent placement of an underground storage tank in an inoperative condition by filling it with inert material. 41 Ill.Admin. Code §170.400. Tanks filled with inert material such as sand, pea gravel, or clay and abandoned prior to October 1, 1985, may be exempt from the registration regulations. 41 Ill.Admin. Code §170.670(d). However, the owners must provide documentation of fill material and date of fill upon request by the Office of the State Fire Marshal. Tanks that have not been used since 1974 are exempt from the registration requirements but still must be sealed properly. Abandoned tanks not filled with sand or pea gravel must be removed from the site within one year after abandonment.

4. [7.21] Financial Responsibility

In 1993, the Illinois General Assembly enacted P.A. 88-496 (eff. Sept. 13, 1993), which amended the Environmental Protection Act, 415 ILCS 5/1, *et seq.*, to provide for the Illinois Underground Storage Tank Fund (“Leaking Underground Storage Tank (LUST) Trust Fund” or “Petrofund”). 415 ILCS 5/57.8, 5/57.9. The fund was designed to act as an insurance pool to reimburse tank owners and operators for the corrective action costs associated with remediating a leaking tank. The fund was designed to cover the costs of remedial investigations; laboratory services; installing monitoring wells; removal, treatment, transportation, and disposal of contaminated soils and tanks; and engineering oversight services. Owners and operators of petroleum-containing USTs, if the tank has been registered and all fees have been paid, are eligible for reimbursement from the fund. The Illinois Emergency Management Agency must be notified of a confirmed release.

Similar to other insurance policies, there are “deductibles.” The following deductibles apply to eligible owners and operators of underground tanks: (a) \$10,000 per occurrence for an owner who is in full regulatory compliance (*i.e.*, has properly registered and monitored existing and new tanks); (b) \$15,000 per occurrence for an owner who registered at least one tank but not all of its tanks by July 28, 1989 (when the state received notice of the confirmed release on or after July 28, 1989); (c) \$50,000 per occurrence for an owner who registered any tanks prior to July 28, 1989 (when the state received notice of the confirmed release prior to July 28, 1989); and (d) \$100,000 per occurrence for an owner who failed to register any tanks in use by July 28, 1989. 415 ILCS 5/57.9(b). Note however, in the case of USTs used exclusively to store heating oil for consumptive use on the premises where stored and that serve other than farms or residential units, a deductible of \$100,000 shall apply when none of these tanks were registered prior to July 1, 1992. 415 ILCS 5/57.9(b)(1).

Thus, although there is money available to assist schools in removing tanks in order to bring them into compliance with the law and regulations, there are stiff deductibles for those owners who did not register their tanks properly.

Under the School Code, a school district’s tort immunity tax levy may be levied for the purpose of paying judgments and settlements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. 105 ILCS 5/17-2.5.

VI. [7.22] RESPONSIBLE PROPERTY TRANSFER ACT

The former Responsible Property Transfer Act of 1988 (RPTA), which was codified at 765 ILCS 90/1, *et seq.*, applied to property transactions occurring on or after January 1, 1990, and until August 9, 2001, the effective date of the Act’s repeal by P.A. 92-299. An action that accrued under the RPTA before its repeal may be maintained in accordance with the RPTA as it existed before its repeal.

The RPTA required a transferor of real property subject to the Act to deliver an environmental disclosure statement to the transferee or lender within 30 days following execution

of a written contract and not later than 30 days prior to the transfer. See generally Kay L. Pick, *Responsible Property Transfer Act: A Trap for the Unwary*, 3 CBA Rec. No. 2, 20 (Feb. 1989). The disclosure form, included as §5 of the RPTA, contained information regarding potential environmental defects in the property. Section 3(e) of the RPTA provided that the real property subject to the RPTA included parcels of land and the improvements thereon that (a) contained underground storage tanks requiring notification under §9002 of the Solid Waste Disposal Act, 42 U.S.C. §6901, *et seq.*, or (b) contained one or more facilities that were subject to reporting under §312 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. §11001, *et seq.* (Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub.L. No. 99-499, 100 Stat. 1613, 1728), and the federal regulations promulgated thereunder. 42 U.S.C. §§6991a, 11022.

In order to determine whether the RPTA applied to a particular transaction, a school district or community college was required to address two questions: First, were underground storage tanks on the property, and, if so, were they subject to the reporting requirements? See generally 40 C.F.R. pt. 280. Second, was the school district or college required to submit material safety data sheets (MSDS) under the Occupational Safety and Health Act of 1970 (OSHA), 29 U.S.C. §651, *et seq.*, and the regulations promulgated thereunder, and, if so, were they subject to the requirements promulgated under §312 of EPCRA, 42 U.S.C. §11022?

A school district or community college should consult the RPTA's UST reporting requirements and the reporting requirements of §312 of EPCRA if it believes a qualifying transaction occurred during the time the RPTA was in effect. Under the enforcement provisions of §7 of the RPTA, a transferor of property that failed to disclose under §4 of the RPTA was liable for up to \$1,000 per day, a transferor that knowingly made false statements was liable for up to \$10,000 for each day, a transferor that failed to record the disclosure statement as required in §6 of the RPTA was liable for up to \$10,000, and persons damaged due to a violation of any of the provisions of the RPTA could be awarded damages, attorneys' fees, and costs.

VII. [7.23] ASBESTOS MANAGEMENT

Asbestos is a naturally occurring fibrous mineral that resists degradation by chemical, thermal, or mechanical action. Asbestos was used extensively as fireproofing and thermal insulation, gasket material, and a strengthening agent for composite material such as concrete. Asbestos-containing material (ACM) is any substance containing greater than one percent of asbestos on a dry-weight basis. Asbestos-containing building material (ACBM) is surfacing ACM, thermal system insulation ACM, or miscellaneous ACM that is found in or on interior structural members or other parts of a school building.

Increasing evidence of health risks associated with exposure to airborne asbestos fibers has been studied extensively. Asbestos has been classified as a known human carcinogen capable of producing lung cancer and acting synergistically with smoking to produce lung cancer. In addition, asbestos can cause mesothelioma. In order to address these health concerns, Congress regulates asbestos as a hazardous substance under the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. §6901, *et seq.*, the Occupational Safety and Health Act, and the

Asbestos Hazard Emergency Response Act of 1986 (AHERA), 15 U.S.C. §2641, *et seq.* AHERA has a major impact on the management of asbestos in schools.

Regulations promulgated pursuant to AHERA require school authorities to inspect public and private school buildings and to identify friable and non-friable asbestos. AHERA does not apply to community colleges. Local educational agencies (LEAs) must implement management activities to reduce potential exposure to airborne asbestos fibers. LEAs are required to identify ACM, sample materials by using appropriate techniques, adopt and implement management plans, and maintain records of management practices. LEAs are required to use accredited persons to conduct inspections and reinspections, to develop the required management plans, and to perform response actions. LEAs may contractually delegate their duties under AHERA's rules, but the LEAs remain responsible for the proper performance of these duties. 40 C.F.R. pt. 763. Each LEA is required to

- a. ensure that its actions comply with AHERA's regulations;
- b. ensure the proper training of custodial and maintenance employees;
- c. ensure that workers and building occupants (or their legal guardians) are informed at least once each school year about inspections, response actions, and post-response action activities;
- d. ensure that short-term workers (*e.g.*, telephone repair workers, utility workers, or exterminators) who may come in contact with asbestos are provided information regarding the locations of ACBM and suspected ACBM assumed to be ACM;
- e. ensure the posting of required warning labels;
- f. ensure that management plans are available for inspection and that proper notification of this availability has been provided;
- g. designate a properly trained person to ensure that regulatory requirements are properly implemented; and
- h. consider potential conflict-of-interest issues. 40 C.F.R. §763.84.

The Asbestos Abatement Act, 105 ILCS 105/1, *et seq.*, sets forth the requirements of school districts in identifying, managing, encapsulating, and removing asbestos from schools to the extent not inconsistent with the federal regulatory procedure. The Asbestos Abatement Act expressly indicates that schools shall undertake and complete such response actions as may be required by AHERA. 105 ILCS 105/4. School districts are authorized to levy a tax in accordance with §17-2.11 of the School Code in order to provide local funding for corrective action ordered under the Asbestos Abatement Act. 105 ILCS 5/17-2.11.

A. [7.24] Inspections

Local educational agencies are required to complete an inspection of each school building they own, lease, or use in order to identify locations of asbestos-containing building material. All inspections must be completed by an accredited inspector, and samples taken during inspections must be analyzed by an accredited laboratory. 40 C.F.R. §763.85(a). The regulations promulgated under the Asbestos Hazard Emergency Response Act also indicate that each LEA shall conduct a reinspection at least once every three years after a management plan is in effect of all friable and non-friable known or assumed ACBM in each school building it leases, owns, or otherwise uses as a school building. 40 C.F.R. §763.85(b).

B. [7.25] Asbestos Management Plan

Each local educational agency is required to develop an asbestos management plan for each school, including all buildings that it leases, owns, or otherwise uses as school buildings. The plan must be developed by an accredited management planner. 40 C.F.R. §763.93. It must include a description of each inspection, recommendations concerning response action, and the name and address of the “designated person” who has the duty of carrying out the management plan. The management plan shall be maintained and updated to keep it current with respect to ongoing operations and maintenance, surveillance, inspection, reinspection, and response activities. Records shall be maintained in a centralized location in the administrative office of both the school and the LEA as part of the management plan. 40 C.F.R. §763.94. For each homogeneous area where all asbestos-containing building material has been removed, the LEA shall ensure that these records are retained for at least three years after the next required reinspection.

C. [7.26] Operations and Maintenance

Each local educational agency must also establish and implement an operations, maintenance, and repair (O&M) program for every building containing, or assumed to contain, friable asbestos-containing building material. 40 C.F.R. §763.91. The O&M program must address worker protection considerations, cleaning techniques, operations and maintenance activities, short-term maintenance activities, and fiber-release episode procedures. Any custodial or maintenance person working in a school building must receive at least two hours of “awareness training” within 60 days after commencement of employment, even if the person is not required to work with ACBMs. 40 C.F.R. §763.92. An individual who may disturb ACBM during the course of his or her duties must have an additional 14 hours of training. The LEA shall attach a detailed warning label immediately adjacent to any friable and non-friable ACBM and suspected ACBM assumed to be asbestos-containing material located in routine maintenance areas, such as boiler rooms, at each school building. 40 C.F.R. §763.95.

D. [7.27] Abatement Activities

Once an asbestos-containing building material is discovered, the local educational agency must select a response action sufficient to protect human health and the environment. 40 C.F.R. §763.90. The response action must be designed by an accredited project designer, supervised by accredited project managers, and performed by accredited workers. Visual inspection and air sampling must be conducted once the project is completed.

VIII. INDOOR AIR QUALITY STANDARDS

A. [7.28] Indoor Air Quality Act

Effective January 1, 1994, the Illinois Legislature enacted the Indoor Air Quality Act, 410 ILCS 87/1, *et seq.* This Act established the Indoor Air Pollution Advisory Council, which has the duty of establishing criteria for indoor air quality, including ventilation standards, source control guidelines, occupancy control guidelines, and air cleaning procedures. 410 ILCS 87/15. The council does not have the force of law but is merely advisory. Typically, standards for indoor air quality are established by looking to national building codes such as the current standards of the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE). See www.ashrae.org.

In November 1995, the U.S. Environmental Protection Agency issued a guidebook for schools on indoor air quality. These are guidelines rather than mandates. See www.epa.gov/iaq/schools.

B. [7.29] Smoke Free Illinois Act

Effective January 1, 2008, the Smoke Free Illinois Act, 410 ILCS 82/1, *et seq.*, banned tobacco smoking within any “public place or in any place of employment or within 15 feet of any entrance to a public place or place of employment.” 410 ILCS 82/15. Property owners, including school districts, must reasonably assure that smoking is prohibited in indoor public places and workplaces. *Id.* The Act requires property owners to post clearly and conspicuously “no smoking” signs in each public place and place of employment. 410 ILCS 82/20. A property owner violating §15 of the Act shall be fined (1) \$250 for the first violation, (2) \$500 for the second violation within one year after the first violation, and (3) \$2,500 for each additional violation within one year after the first violation. 410 ILCS 82/45.

Additionally, the School Code, as amended by P.A. 89-181, prohibits the use of tobacco on school property by any school personnel, student, or other person when the property is being used for any “school purposes,” which include, but are not limited to “all events or activities or other use of school property . . . including without limitation all interscholastic or extracurricular athletic, academic, or other events sponsored by the school board or in which pupils of the district participate.” 105 ILCS 5/10-20.5b. “The Board of Education shall prohibit the use of tobacco. . . . Neither the board nor the local school council may authorize or permit any exception to or exemption from the prohibition at any place or at any time.” 105 ILCS 5/34-18.11. See 105 ILCS 5/10-20.5b. Thus, smoking is banned both indoors and outdoors on school property.

IX. STRUCTURAL PEST CONTROL ACT

A. [7.30] Integrated Pest Management Programs

Effective January 1, 1993, §10.2 of the Structural Pest Control Act, 225 ILCS 235/10.2, required the Department of Public Health to establish guidelines for an integrated pest

management (IPM) program for school buildings, other school facilities, and day care centers. The goal of an IPM program is to develop an effective, yet environmentally sensitive, approach to pest management. The Illinois Department of Public Health (IDPH), in conjunction with the Structural Pest Control Advisory Council (225 ILCS 235/10.1), developed and issued Integrated Management of Structural Pests in Schools (1994), available at www.idph.state.il.us/envhealth/pdf/imsp.pdf. The Illinois Pest Control Association, working with the IDPH, developed A Practical Guide to Management of Common Pests in Schools (1999), available at www.idph.state.il.us/envhealth/pdf/schoolpests.pdf.

If economically feasible, schools may adopt an IPM program that incorporates the guidelines developed by the Department of Public Health. It is completely voluntary for schools to adopt an IPM program. However, if it is not economically feasible for a school to adopt such a program, written notification must be provided to the department that compares the cost of the school's traditional pest management measures with the projected costs associated with implementing an IPM program.

B. [7.31] Notice of Pesticide Application

Both the Structural Pest Control Act, 225 ILCS 235/1, *et seq.*, and the Lawn Care Products Application and Notice Act, 415 ILCS 65/1, *et seq.*, require schools to provide notice prior to the application of pesticides to school property. The notice requirements under each statute vary slightly.

Under the Lawn Care Products Application and Notice Act, the school must either (1) maintain a registry of parents, guardians, or school employees who have registered to receive written or telephonic notification prior to the application of pesticides to school property; or (2) provide written or telephonic notice to all parents and guardians of students before applying pesticides or having pesticides applied to school grounds. 415 ILCS 65/3(f). At least four business days prior to applying pesticides to school property, the school is required to provide written or telephonic notice to the registry or to all parents and guardians. Notice may be provided through newsletters or other correspondence published by the school, but posting on a bulletin board is not sufficient.

Under the Structural Pest Control Act, schools must maintain a registry of parents, guardians, or school employees who have registered to receive notification prior to the application of pesticides to school property. 225 ILCS 235/10.3. At least two business days prior to applying pesticides to school property, the school is required to provide written notice to the registry or to all parents or guardians. Notice may be provided through newsletters, calendars, bulletins, or other correspondence published by the school.

Under both statutes, notice prior to the application of pesticides is not required when there is an imminent threat to health or property. In cases of imminent threat, notice of the application of pesticides must be provided as soon as possible and must be accompanied by a signed statement from school personnel indicating the circumstances that gave rise to the imminent threat.

X. DISPOSITION

A. [7.32] Sale

When a school board determines by at least a two-thirds vote that a school site, a school building, a portion of a site or building, or any other real estate has become unnecessary, unsuitable, or inconvenient, the board may sell the property subject to the terms and conditions it establishes and according to detailed procedures set forth in the School Code. 105 ILCS 5/5-22. School boards may also exchange a school site or a site and building for a substitute site without referendum if certain criteria are met. 105 ILCS 5/5-23.

When a school board is selling property to another public entity such as a municipality, a unit of local government, another school district, or two or more school districts operating a joint educational program pursuant to §10-22.31 of the School Code, the sale may be controlled by the Local Government Property Transfer Act, 50 ILCS 605/0.01, *et seq.*

Voters of a school district may petition the board of education to seek voter approval via referendum to sell district property to another school district or municipality. 105 ILCS 5/5-24. When such a petition to sell property is pending, it is unlikely that a school board has authority to direct the titleholders to sell the property at public auction pursuant to §5-22 of the School Code. The property cannot be subject to public sale until the referendum on the §5-24 sale has been held.

If property is not sold to another public entity, then the property may be sold at a public sale. 105 ILCS 5/5-22. A real estate broker may be used only after a minimum selling price has not been met a public sale. The listing can be for only 120 days, and the maximum commission payable is seven percent. The board may raise the minimum price for sale through a broker but may not lower the minimum price without repeating the public sale procedures. School property can be sold under such terms and conditions, including contract for deed or such other seller-financed terms, as the school board may specify. *Id.*

B. [7.33] Easements

School districts have authority to grant temporary or permanent easements for sewer, water drainage, or utility purposes under such terms and conditions as deemed appropriate. 105 ILCS 5/5-30. Failure to object promptly to the unauthorized use of land may result in an easement by prescription. *Lincoln-Way Community High School District 210 v. Village of Frankfort*, 51 Ill.App.3d 602, 367 N.E.2d 318, 9 Ill.Dec. 884 (3d Dist. 1977).

C. [7.34] Leasing

The School Code authorizes school boards to lease unused property. The School Code authorizes the leasing of school property to “another school district, municipality or body politic and corporate” for no longer than 25 years, provided that a two-thirds vote of the full membership of the board is required to make, renew, or alter a lease for a period of more than 10 years. 105 ILCS 5/10-22.11(a).

Section 10-22.11(b) of the School Code allows the leasing of vacant school property for up to 51 years to private, not-for-profit school organizations for trainable mentally handicapped, educable mentally handicapped, or gifted children. This leasing requires voter approval via referendum of the lessee, term, and price.

Section 10-22.11(c) of the School Code authorizes school boards to lease school buildings to suitable lessees for a maximum of 25 years for educational purposes or for any other purpose that serves the interests of the community if the buildings are declared to be unnecessary, unsuitable, or inconvenient for school purposes during the term of the lease. The leases must include provisions for adequate liability and property damage insurance and reasonable charges for maintenance and depreciation.

Nothing in §10-22.11 precludes a school board from causing the sale of property during the term of a lease if the buyer is willing to purchase the property subject to the lease and the school board has determined that the property is no longer needed for school purposes. While school boards have authority to enter into leases under such terms and conditions as are deemed appropriate, unless there is an overriding public purpose served, school boards should not enter into leases for nominal consideration.

D. [7.35] Involuntary Disposition

Article 7 of the School Code, 105 ILCS 5/7-1, *et seq.*, establishes procedures for detachment of school territory, which may include school buildings from one school district for annexation to another school district. The decision as to whether the detachment petition should be granted is made by the regional board of school trustees. While affected school boards may present testimony at the hearing held on the issue, an affected district has no direct control over whether its school property will be detached.

As discussed in §7.8 above, in certain instances, a school district may lose property acquired by condemnation by reversion. However, *see Scheller v. Trustees of Schools of Township 41 North, Range 12, East of Third Principal Meridian, Cook County, Illinois*, 67 Ill.App.3d 857, 384 N.E.2d 971, 24 Ill.Dec. 104 (1st Dist. 1978).

School property acquired by gift or donation may be lost if the property was given in trust for a specified purpose and the purpose ceases to be operative. *See generally Wauconda Community Unit School District No. 118, Lake County, Illinois v. LaSalle National Bank*, 143 Ill.App.3d 52, 492 N.E.2d 995, 97 Ill.Dec. 336 (2d Dist. 1986).

XI. TAX EXEMPTION

A. [7.36] In General

The Property Tax Code, 35 ILCS 200/1-1, *et seq.*, provides that all property owned by school districts that is not sold, leased, or otherwise used with a view to profit is exempt from taxation. 35 ILCS 200/15-35, 200/15-135. The following also is exempt:

- (a) property of schools which is leased to a municipality to be used for municipal purposes on a not-for-profit basis;**
- (b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes [and];**
- (c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes. 35 ILCS 200/15-35.**

B. [7.37] Primary Use of Property

The mere fact that property is owned by an educational institution is insufficient in and of itself to exempt it from taxation as the primary use of the property, not its ownership, will determine its taxable status. *Northern Illinois University Foundation v. Sweet*, 237 Ill.App.3d 28, 603 N.E.2d 84, 177 Ill.Dec. 303 (2d Dist. 1992). When a school district relinquishes its right to “control” its property, ownership alone will be insufficient to entitle the school district to an exemption for the property. *Board of Education of Glen Ellyn Community Consolidated School District No. 89 v. Department of Revenue*, 356 Ill.App.3d 165, 825 N.E.2d 746, 292 Ill.Dec. 158 (2d Dist. 2005).

A school district claiming an educational use exemption must show that the property is primarily, and not incidentally, used to fulfill the school’s educational objectives of efficient administration of the school. *Sweet, supra*, 603 N.E.2d at 90 – 91. If property is devoted to a tax-exempt purpose, an incidental use of its facilities for another purpose but not for profit does not defeat the exemption. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363, 58 N.E.2d 33 (1944). *See also Illinois Institute of Technology v. Skinner*, 49 Ill.2d 59, 273 N.E.2d 371 (1971). However, when leasing to a not-for-profit or other tax-exempt organization, the use may involve an incidental production of income without loss of tax-exempt status necessarily following. *Childrens Development Center Inc. v. Olson*, 52 Ill.2d 332, 288 N.E.2d 388 (1972).

C. Procedures for Applying for Tax Exemption

1. [7.38] Application Process

School districts that acquire property must file a real estate exemption application with the local board of review for the county in which the property is located. Application forms can be obtained by contacting the local board of review. While counties differ in the documentation they require to process exemption applications, they generally require some, or all, of the following original (unless otherwise indicated) documents as support for the exemption application:

- a. an exemption application;
- b. an Illinois Department of Revenue Form PTAX-300, Application for Non-Homestead Property Tax Exemption;
- c. an affidavit of tax-exempt use;

- d. a governmental exemption petition;
- e. a copy of a recorded deed, including a parcel identification number and a legal description of the property;
- f. any income leases;
- g. current tax bills;
- h. photographs of the property;
- i. a plat of survey, plat of subdivision, etc.;
- j. a copy of notices to taxing districts, if required, with copies of certified mail receipts;
- k. a copy of any non-homestead property tax exemption certificate previously issued to the school district;
- l. a copy of a request for name and address change previously submitted to the county; and
- m. any other documents requested by the board of review.

School districts or their attorneys should contact the local board of review to find out which documents are required by the particular board of review.

2. [7.39] Board of Review Action

Once the local board of review receives a completed exemption application, it will conduct an investigation into the facts alleged in the application and attempt to verify the description of the property and its use. Additional information may be requested. If the local board of review determines that it is necessary, it may also hold a hearing on the exemption application. Generally, school districts are given one to two weeks' notice of these hearings and may call school district officials to testify at the hearing to provide additional information to the exemption application.

After its review of the exemption application and, if held, the hearing, the board of review submits to the Department of Revenue the exemption application and supporting documentation along with a recommendation as to whether the Department of Revenue should grant or deny all or part of the requested exemption.

3. [7.40] Department of Revenue Action

The Department of Revenue reviews the exemption application and its supporting documentation, as well as the local board of review's recommendation. The Department of Revenue may request additional information about the property for which the school district is claiming an exemption. The Department of Revenue may accept or reject the board of review's recommendation, in whole or in part, for all or a portion of the tax year for which it was filed.

Property may be deemed less than 100-percent exempt when the Department of Revenue determines that it is not used solely for exempt purposes (e.g., a portion of the property is leased to a taxable entity for profit). Partial exemptions will be clearly indicated as such on the Certificate of Non-Homestead Property Tax Exemption issued by the Department of Revenue. The Department of Revenue may also determine that while property is entitled to a 100-percent exemption, it may not have been owned by the school district for the entire year for which the exemption application was filed, and, therefore, the property will be 100-percent exempt from a percentage of the taxes for that year (e.g., 100-percent exempt from 85 percent of taxes in tax year 2005).

4. [7.41] Appeal of Department of Revenue Determination

School districts that are aggrieved by a determination of the Department of Revenue may seek administrative review of the determination pursuant to the Administrative Review Law, 735 ILCS 5/3-101, *et seq.*

D. [7.42] Annual Affidavit of Tax Exemption

School districts are required to file with the chief county assessment officer by January 31 of each year an affidavit stating whether there has been a change in the ownership or use in all or part of their tax-exempt property and, if so, a detailed description of any such change. 35 ILCS 200/15-10. The failure to file the annual affidavit can cause the termination of the school district's tax exemption. *Id.*

E. [7.43] Leasing and Licensing of Tax-Exempt Property

School districts that lease or license all or part of their tax-exempt property for profit must furnish copies of the leases or license or rental agreements along with a complete description of the leased or licensed premises, including the exact size, so that the chief county assessment officer can create a permanent identification number for the leased or licensed property or leased or licensed portion of the property and return it to the county's tax rolls. 35 ILCS 200/15-15. The failure to file copies of the leases or rental agreements can cause the termination of the school district's tax exemption. *Id.*

F. [7.44] Termination of Tax Exemption

If the Department of Revenue determines that school district property has been unlawfully exempted from taxation or is no longer entitled to exemption, it must notify and direct the chief county assessment officer to assess the property and return it to the assessment rolls for the next assessment year before January 1 of any year. 35 ILCS 200/15-25. The Department of Revenue must serve notice of its determination on the school district by certified mail. *Id.*

G. [7.45] Appeal of Termination of Tax Exemption

A school district that feels aggrieved by a Department of Revenue decision to terminate an exemption may, within 20 days after notice by certified mail, file an application for a hearing

with the Department of Revenue. 35 ILCS 200/8-35(a). The application must include a description of the alleged mistakes made by the Department of Revenue and any new evidence to be presented. School districts cannot seek judicial review of the Department of Revenue's decision until it has filed the application for hearing and the Department of Revenue acts on the application. *Id.*

The extension of taxes on the allegedly incorrect assessment will not be delayed during the hearing or appeal process. *Id.* If the property is determined to be exempt, any taxes extended on the assessment shall be abated or, if already paid, refunded. 35 ILCS 200/15-25.