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CEREMONIAL PRAYER PERMISSIBLE AT LOCAL BOARD MEETINGS

Last month, in the case of *Town of Greece v. Galloway*, the United States Supreme Court extended its precedent permitting a ceremonial prayer at the beginning of a legislative session to a local government town council meeting. Although that case concerned a municipal governing board and the justices provided varying opinions to support their action in a 5-4 decision, the logic of all the opinions suggests that no different result would likely apply to school board meetings.

The Town of Greece, New York, since 1999 opened its monthly board meeting with a prayer given by volunteer clergy selected from the congregations listed in a local directory. While the program was open to all denominations, all participating clergy for eight years were Christian. Town officials did not review the prayer in advance and provided no guidance as to tone or content.

In 1983, in the case of *Marsh v. Chambers*, the

19730 Governors Highway, Suite 10, Flossmoor, IL 60422-2083
Telephone: **708.799.6766** | Facsimile: 708.799.6866

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BOYLE & IZZO, LLC
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Supreme Court held that, based on the long-standing tradition and practice first established by the same first Congress which wrote the First Amendment's prohibition against government establishment of religion, a ceremonial prayer at the beginning of a state legislative session does not offend that provision of the Constitution. While some lower courts have attempted to limit the *Marsh* precedent to the federal and state legislatures, all nine of the justices in *Galloway* apparently viewed *Marsh* as applicable to some degree to the town council in this case.

What divided the Court here was whether the Town of Greece's practice conformed closely enough to a permissible ceremonial invocation. The dissenters, like the Court of Appeals, believed that the town officials' longtime practice of selecting only Christian clergy violated the Constitution. Further, they pointed to the greater community involvement inherent in local government meetings and, based on that, found fault in highly sectarian prayers addressed not just to the council members but to the community members in attendance.

But the majority held that permissible invocations need not be nonsectarian or inoffensive to all possible listeners. "Government may not mandate a civic religion that

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stifles any but the most generic reference to the sacred any more than it may prescribe a religious orthodoxy." Still, the Court articulated the following standard:

> "The relevant constraint derives from its place at the opening of legislative sessions, where it is meant to lend gravity to the occasion and reflect values long part of the Nation's heritage. Prayer that is solemn and respectful in tone, that invites lawmakers to reflect upon shared ideals and common ends before they embark on the fractious business of governing, serves that legitimate function. If the course and practice over time shows that the invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion, many present may consider the prayer to fall short of the desire to elevate the purpose of the occasion and to unite lawmakers in their common effort. That circumstance would present a different case than the one presently before the Court."

In sum, where a school board wishes to add solemnity to its meetings through a religious invocation, it would best be advised to rotate in a nondiscriminatory fashion those invited to present it and to request that their prayer address the board

members in the manner suggested by the Court.

Should you have any questions, please contact one of our attorneys at our Flossmoor Office at 708-799-6766.

STATE'S ATTORNEYS SUBJECT TO FOIA

Reversing the decision of the Appellate Court last year, the Illinois Supreme Court has ruled that the office of the State's Attorney in each county is indeed subject to the Freedom of Information Act ("FOIA").

FOIA, which requires the disclosure of most state and local governmental records upon request from any member of the public, has certain limited exceptions. It is a statute with which officials in school districts and other local governments have had to become very familiar, especially since the sweeping

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amendments in 2010. Since its enactment, FOIA has broadly defined "public body" to include "all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of the State, any subsidiary bodies of any of the foregoing …." However, this definition does not include the judicial branch. The State's Attorney in Kendall County, which had been served with document requests, had been able to convince the local circuit court and the Illinois Appellate Court, Second District, that office of the State's Attorney belongs to the judicial branch and is, therefore, not a public body subject to FOIA. This view was emphatically rejected by the Illinois Supreme Court on May 22, 2014, in its opinion in *Nelson v. Kendall County*. In that opinion, the Court reviewed both the language and the policy of FOIA, as well as previous court rulings, to conclude that for purposes of FOIA the office of State's Attorney is part of the executive branch.

School districts may find this decision helpful in obtaining copies of correspondence, legal opinions, and notices

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affecting them which have been prepared, issued, or retained by their local State's Attorney. For instance, where a state's attorney's office has documents relating to such school district-related matters as property tax objections, board member qualifications disputes, or criminal proceedings against employees, requests for copies may no longer be rebuffed out-of-hand.

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