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“Legal Update” Webinar—West Cook ASBO

John M. Izzo will present a virtual “Legal Update” to the West Cook Association of School Business Officials on February 10, 2021 at 10:00 a.m. www.my.iasbo.org

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WORKING CASH BONDS USE FOR BUILDING PROJECTS RECEIVES APPELLATE COURT APPROVAL,

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AGAIN

For the second time in a little more than three years, an Illinois Appellate Court panel has rejected the persistent claims of tax rate objectors that limited bonds, such as working cash bonds, cannot be used for capital projects without prior voter approval.

In 2017, the Illinois Appellate Court, Second District, issued an opinion in the case of *1001 Ogden Avenue Partners v. Henry*. There, the focus was on whether building improvement projects fell within the broad meaning of the "corporate purposes" for which non-referendum working cash bonds could be issued. The Second District answered this question in the affirmative.

In a new order issued December 24, 2020, the Illinois Appellate Court, First District, followed the Second District's lead. In *1400 Wolf Road, LLC v. Pappas*, the court rejected several alternative arguments as to why a school district could not

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issue working cash bonds without voter approval, even though the school district had indicated an intent to use the bond proceeds for certain building projects. The court recognized that the law permits the issuance of these bonds even when the proceeds are intended for permanent transfers, not just future loans, and for capital projects, not just operational expenses. Both *1001 Ogden Partners* and *1400 Wolf Road* held that a school district giving the notices prescribed by law prior to the issuance of working cash bonds did not have to say anything more in those notices in order to justify using the bonds for capital purposes.

It has long been a common practice for school districts throughout the State to borrow money via non-referendum limited bonds, such as working cash or funding bonds, and then to transfer the proceeds to pay the cost of capital improvements – large or small, but short of building a new school building. Such a method of financing is, of course, subject to various express legal limitations. School Code Article 20 provides a limit on the amount of a working cash bond issue. These bonds can only be issued after public notice and an opportunity for a

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backdoor referendum petition and after a public hearing under the Bond Issue Notification Act. The taxes to pay for the bonds must fall within the limits of the district's debt service extension base.

The tax rate objectors argued that the issuance of working cash bonds for capital projects must follow the School Code's direct referendum process for building bonds, and that failing to do so also violated the Property Tax Extensions Limitation Law and other statutes. The court in *1400 Wolf Road* held that a school district following all the statutory procedures for the issuance of working cash bonds did not violate any other law.

Aspects of this particular tax rate objection theory have been pursued for many years by taxpayers in different counties. Amendments to Article 20 in 2010 clarified that abatements of the working cash fund may be made "at any time" and the transfers may be made to "any fund". Nonetheless, there are rate objections against numerous school districts still pending in court which are premised on the theory which has now been

rejected twice in the Appellate Court. While the objectors may yet seek review by the Illinois Supreme Court, the fact that two Judicial Districts have come to the same conclusion means that such review is highly unlikely.

What we said in our Priority Briefing after the decision in *1001 Ogden Partners* applies just as well after the decision in *1400 Wolf Road*:

"*The consequences of a court decision going the other way can hardly be overstated. Not only would those school districts with pending objections of this sort (and there are scores of those) face the prospect of losing millions of dollars in revenue through tax refunds, no school district in the future would be able to finance even the most routine capital projects without waiting for voter approval*."

John Izzo of Hauser, Izzo, Petrarca, Gleason & Stillman, working with other law firms, has been actively involved in the long

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struggle to defeat the working cash fund bonds objections throughout the years of litigation in DuPage and Cook Counties and the successful effort to pass the amendments to Article 20 of the School Code. If you have any questions, please contact John or any our attorneys in our Flossmoor Office at 708-799-6766 or our Oak Brook Office at 630-928-1200.

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Eric S. Grodsky Named Newest Partner

JANUARY 4, 2021 – Hauser, Izzo, Petrarca, Gleason & Stillman, LLC has proudly named Eric S. Grodsky, as the firm's newest partner.

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Grodsky brings nearly two decades of career experience to the partnership including his time as a corporate litigator to his work as a charter school administrator and as the Deputy General Counsel at the Illinois State Board of Education. In addition to his successful litigation work, Grodsky regularly provides counsel to his clients on employment matters, drafting and negotiating contracts and intergovernmental agreements, and advising on board governance and regulatory matters.

“During his five years with the firm, Eric has built an excellent reputation with the firm’s long-standing clients,” said Ray Hauser. “Eric’s addition to the partnership upholds our emphasis on deep experience that we continually strive for. We are thrilled to have him on board.”

Grodsky represents clients before state and federal agencies and courts, leads internal investigations, and advises client on student rights and disciplinary matters, and compliance with the Open Meetings Act, Freedom of Information Act, Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the

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Americans with Disabilities Act, the Family and Medical Leave Act, and unfair labor practice charges.

“Eric’s approach to his work has proven to be invaluable to our clients. He has been instrumental to our growing practice while providing counsel to help our clients navigate all aspects of the challenges they face,” said Bill Gleason. “We’re delighted to welcome such a talented attorney like Eric to our partnership.”

Grodsky earned his J.D. and B.B.A from the University of Wisconsin-Madison, and is licensed to practice law in Illinois, Ohio, and Wisconsin.

Hauser, Izzo, Petrarca, Gleason & Stillman, LLC provides a broad range of legal services in the areas of school law, business transactions, labor and employment, employee benefits and litigation. The firm has provided more than 70 collective years of service to local government entities, school districts and

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private clients in a diverse set of industries. For more information, or to contact Eric Grodsky, please visit https://www.dev.hauserizzo.com or egrodsky@dev.hauserizzo.com.

Please See Announcement Here

PUBLIC ACCESS COUNSELOR SETS RULES FOR REMOTE MEETING CONCERNS

Recently, the Public Access Counselor at the Illinois Attorney General's Office ("the PAC") has issued opinions on remote meeting concerns involving the Open Meetings Act. Public bodies must take efforts to ensure compliance or risk findings of a

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violation of the Open Meetings Act.

In a non-binding opinion, the PAC determined that a school district violated the Open Meetings Act when certain individuals were unable to access the meeting. The board of education held a meeting to discuss its school reopening plan and permitted the public to attend remotely. At the time of the meeting, the district's Zoom license only permitted 100 individuals to access the meeting at a time. Although the board anticipated that the meeting would generate significant interest among members of the public, it did not increase the limit on its license.

The PAC ruled that this situation constituted a violation of the Open Meetings Act. It did not meet the requirement that when conducting a remote meeting, the public body make alternative arrangements to "allow any interested member of the public access to contemporaneously hear all discussions, testimony and roll call votes." Districts should take care that however they may conduct remote meetings permits all interested members of the public to attend. Having a license only permitting a limited

number of individuals to attend could subject a district to complaints under the Open Meetings Act.

Similarly, the PAC has also issued a binding opinion about muting the audio during meetings. A village board conducted a videoconference meeting. During the meeting, the mayor had a question for the city clerk regarding the propriety of discussing a personnel matter in the public session. In order to conduct a private "sidebar," the mayor had the audio muted to specifically ask the clerk his question. The audio was muted for approximately one minute.

As many know, it is quite common during an in-person meeting that various members of the governing board may engage in private sidebar discussions. The PAC ruled that there is no provision within the remote meeting procedures that permits muting the conversation. There is no exception to the rule that members of the governing board must be audible during a remote meeting and that by muting the conversation, the body did not permit all interested individuals "to contemporaneously hear all

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discussion, testimony, and roll call votes."

It is clear that the PAC is strictly construing the remote meeting procedures. Although certain exceptions may exist for in-person meetings, the PAC is not reading those into the remote procedures.

Districts should consider these rules and ensure that they are following the requirements of the remote meeting rules. The attorneys at Hauser, Izzo, Petrarca, Gleason & Stillman are available to consult on any questions you may have.

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NEW MANDATE TO POST IMRF LINK ON DISTRICT WEBSITES

Beginning January 1, 2021, Illinois school districts and other local taxing bodies are required to post a link on their websites to the following URL:

https://www.imrf.org/en/about-imrf/transparency/employer-cost-and-participation-information

This webpage is on the Illinois Municipal Retirement Fund ("IMRF") website and contains information about all IMRF employers' participation in the fund. Illinois Public Act 101-504, which was passed in 2019, does not require school districts and other local taxing bodies to create or maintain a website. However, to the extent a school or other local taxing district already has a website, it must post this link on its website on or before January 1, 2021.

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Please contact one of our attorneys if you have any questions.

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COOK COUNTY SCHOOL BOARD CANDIDATES' FILING LOCATIONS ANNOUNCED FOR THE APRIL 6, 2021, ELECTION

As you are aware, filings for school board candidates are handled by the County Clerk rather than at the local school districts as was done in the past. The Cook County Clerk handles this increase in the volume of filings by using multiple

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sites in the suburbs as well as the Clerk's central office in Chicago to accept these filings. The Cook County Clerk announced yesterday that the below-listed filing sites will be used for the upcoming election.

For the first day of filing only, December 14, 2020, the hours of filing will be from 8:00 a.m. to 5:00 p.m. and there will be 4 locations where petitions may be filed:

Orland Park Civic Center 14750 Ravinia Avenue Orland Park, IL	Old Orchard Country Club 700 W. Rand Road Mt. Prospect, IL
Elections Operations Center 1330 S. 54th Avenue Cicero, IL	Cook County Clerk's Office 69 W. Washington, Pedway Level Chicago, IL

For the remaining filing period days (Tuesday, December 15

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through Friday, December 18, and Monday, December 21), the hours for filing will be from 9:00 a.m. to 5:00 p.m. and the locations will be limited to the following:

Elections Operations Center	Cook County Clerk's Office
1330 S. 54th Avenue Cicero, IL	69 W. Washington, 5th Floor Chicago, IL

With respect to the Chicago location, note that the filings on each day after December 14 will be on the 5th Floor rather than on the Pedway Level.

All candidates who are in line by 8 a.m. on December 14 will have their papers stamped with that time. If more than one candidate seeking the same office files at 8 a.m., a lottery will be conducted to determine whose name will appear first on the ballot. Candidates for the same office who file between 4

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and 5 p.m. on December 21, the last day of filing, will also be included in a ballot lottery for the last spot on the ballot. Anyone who files between 8:01 a.m. on December 14 and 3:59 p.m. on December 21 will be on the ballot in the order they turned in their nomination paperwork.

If you have any questions, please contact our attorneys in our Flossmoor Office at 708-799-6766 or our Oak Brook Office at 630-928-1200.

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“Board Governance Issues”

On December 2, 2020, Courtney N. Stillman and John Izzo will

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present a Superintendent Legal Panel on "Board Governance Issues" 10 am to noon for the Illinois Association of School Administrators www.iasaedu.org.

Annual IASBO Conference – Virtual Session

The Annual Conference of the Illinois Association of School Business Officials is virtual for 2020 and will be taking place on November 6 and 13. John Izzo has a pre-recorded session as part of that conference, where his topic is "Five Areas of School Finance Where Legislation is Urgently Needed". John discusses legislative proposals in the areas of TIF reform, post-refund recovery levies, interfund transfers, fund accumulations, and hospital tax exemptions.

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LAWSUIT ALERT: TAKE CAUTION BEFORE RESPONDING TO SPECIAL EDUCATION CLASS ACTION

This is to alert you to a class action lawsuit in which the attorneys for the plaintiff students, although bringing the case in a New York federal court, are attempting to draw in school districts throughout the country, even in Illinois. If you receive notice of this case, we advise you not to respond without first consulting your attorneys.

On July 28, 2020, a group of special education students filed a class action lawsuit in the United States District Court for the Southern District of New York. The lawsuit, *J.T. v. DeBlasio, et al.*, focuses primarily on the State of New York's decision to close schools and switch from in-person instruction to remote

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learning because of the COVID-19 pandemic. The lawsuit alleges that the school closings prevented special education students from receiving a Free Appropriate Public Education ("FAPE") and resulted in special education students receiving less instruction in comparison to general education students. Because the decision to close schools was not made by just New York, the lawsuit names each State Department of Education, as well as nearly every school district in the country. Like all class action lawsuits, the students seek to add all other "similarly situated" students across the country to the list of students currently named as plaintiffs in the lawsuit.

The students' complaint requests various compensatory and punitive damages and includes numerous allegations that students with disabilities were denied procedural and substantive protections under the Individuals with Disabilities Education Act ("IDEA") due to changes in services without notice to and input from parents. The complaint alleges that the substitution of remote learning for in-person instruction denied students an appropriate education and that students with disabilities did not have the same access to appropriate educational services

compared to their general education peers. The complaint also alleges a violation of the IDEA's "stay put" provision, which they argue should afford students with a stable learning environment during an event such as a pandemic. The students claim that if their current placement becomes unavailable, the school district must somehow provide similar services pursuant to the "stay put" provision.

However, on September 2, 2020, the Chief Judge of the New York court issued an Order to Show Cause (a judge's demand to a litigant(s) for information related to the case), which began with the Chief Judge stating that she entertains "serious doubts about numerous procedural aspects of the case." The Order to Show Cause requires the students' attorneys to persuade the court that: (1) the court has jurisdiction over the non-New York school districts; (2) the court's district (as opposed to the other 3 U.S. District Courts in New York) is a proper venue for the lawsuit; and (3) that all defendants other than the New York City Department of Education are proper defendants because they (allegedly) have made specific, individualized decisions to deprive the students of the services to which they were entitled

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during the pandemic. If the students' attorneys cannot persuade the court accordingly, the lawsuit will be dismissed, a different federal New York court will hear the case, or certain defendants will be dismissed from the lawsuit, or a combination of the foregoing will occur.

Some Illinois school districts are starting to receive requests to accept or waive service of the lawsuit from the law firm representing the students (the New York-based Brain Injury Rights Group). If you receive one of these requests please notify your attorney immediately, and do not accept or waive service without first consulting with your attorney.

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NEW GUIDANCE EMPHASIZES IMPORTANCE OF SCHOOL AND LOCAL HEALTH DEPARTMENT COLLABORATION

New guidance issued this week by the Illinois Department of Public Health ("IDPH") provides clarity on the role local health departments play in helping schools combat the spread of COVID-19 as they return to hybrid or full in-person instruction. While school districts should maintain consistent and open communication with their local health departments, here are a few key issues highlighted in the recent guidance:

- A new decision tree indicates that schools should require documentation from the Local Health Department or healthcare providers before permitting employees or students to return to school in the following situations:

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1. When a person has isolated because he or she previously tested positive for COVID-19, or was diagnosed with COVID-19 without diagnostic testing, the school should obtain a "release from isolation" letter issued by the Local Health Department to the sick individual;
2. When a person has COVID-19-related symptoms, but obtains a negative COVID-19 diagnostic test, the school should obtain a copy of the negative test or a health care provider's note indicating that the test was negative;
3. When a symptomatic person obtains an alternative diagnosis, but does not get a negative COVID-19 test, the school should obtain a healthcare provider's note with the alternative diagnosis
4. When a person stays home due to COVID-19 symptoms, but does not get a COVID-19 test or an alternative diagnosis, the school should obtain a note from the employee or parent/guardian of the student indicating that the sick individual has been fever-free without fever-reducing medication for at least 24 hours and that other symptoms have improved.

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5. When an asymptomatic person has quarantined because he or she was a “close contact” to a confirmed or probable COVID-19 case, the school should obtain a “release from quarantine” letter issued by the Local Health Department to the sick individual.

Please note that, in addition to obtaining the above documents, school districts should continue to require that people who have confirmed or probable cases of COVID-19 must meet the following time-based requirements before returning to school: (1) at least 10 days from the onset of symptoms; (2) at least 24 hours fever-free without fever-reducing medication; and (3) improvement of other symptoms.

- Schools should send an immediate written notification to the Local Health Department when a student or staff member tests positive for COVID-19 or becomes sick with COVID-19 symptoms. Schools should share all available information about the case’s movements and potential exposures within the facility.

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- The Local Health Department will contact the COVID-positive individual to perform contact tracing. School districts should aid this process by providing the Local Health Department with attendance records, classroom schedules, seating charts, transportation schedules, and staff assignments to help identify close contacts.
- If a person diagnosed with COVID-19 is determined to have been within school during the 48 hours prior to symptom onset (for a symptomatic person) or 48 hours before specimen collection (for an asymptomatic person), the school may be closed temporarily for cleaning and disinfection. When school closure is warranted will be determined through a Local Health Department investigation.
- If an outbreak occurs (e.g., at least 2 cases within 14 days in the same classroom), the Local Health Department will investigate to determine the extent of exposure at the school and what control measures (ranging from increased social distancing procedures to school closure) are warranted.

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Our office will continue to provide updates as more information becomes available. If you have any questions, please do not hesitate to contact one of our attorneys.

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