

Robbins Schwartz

Critical Laws Affecting Your College: Local Government Travel Expense Account Act; Changes to the State Liquor Control Act; and Business Enterprise for Minority, Female and Persons with Disabilities Act update.

2016 ICCCF0 Conference

Rend Lake

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3:15 P.M. – 4:15 P.M.

Presented By: Kenneth M. Florey

Robbins Schwartz

Questions and Answers:
Local Government Travel Expense
Account

Local Government Travel Expense Account Act – Effective January 1, 2017

- » The Act: PA 99-604 regulates the reimbursement for all travel, meal and lodging expenses for employees and board members. The Act is effective **January 1, 2017**.

Local Government Travel Expense Account Act – Effective January 1, 2017

- The Regulations: At a minimum, governing boards of local governments must pass a resolution regulating the reimbursement of all travel, meal and lodging expenses for its officers and employees which includes the following elements:
 - › The **types of official business** for which travel, meal, and lodging expenses are allowed;
 - › The **maximum allowable** reimbursement for such expenses; and
 - › A **standardized form** for use in obtaining reimbursement.
 - › The law contemplates that public bodies will adopt **more stringent rules** and restrictions on travel related expenses **for officials and board members**.

Local Government Travel Expense Account Act – Effective January 1, 2017

- Documentation of Expenses: The regulations should provide that the **form submitted for reimbursement** must be supported by at least the following information:
 - › The name and title of the individual seeking reimbursement;
 - › A cost estimate of expenses not yet incurred or a receipt if expenses have been incurred; and
 - › The dates and the nature of the official business in which the expenses were or will be incurred.
 - › The Act makes clear that all documents and information submitted under the Act are subject to disclosure under FOIA.

Local Government Travel Expense Account Act – Effective January 1, 2017

- Approval of Expenses: Starting **March 2, 2017**, a roll call vote of the Board is required for approval of the expenses of an officer or employee that exceeds the maximum allowable reimbursement.
 - › Additionally, all expenses for any member of the Board, regardless of amount, must be approved by roll call vote.
 - › On and after **June 30, 2017**, no travel, meal, or lodging expenses can be approved or paid unless regulations have been adopted by the Board.

Local Government Travel Expense Account Act – Effective January 1, 2017

- No Entertainment: The Act prohibits local public agencies from reimbursing expenses for **“entertainment.”**
 - Entertainment is defined to include, but not limited to, “shows, amusements, theaters, circuses, sporting events or any other place of public or private entertainment or amusement **unless ancillary** to the purpose of the program or event.”
 - What is **“ancillary to the purpose of the program of event”** should be a common sense determination on a case-by-case basis until there is some additional guidance regarding how this will be interpreted and applied.

Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Distinction between Board Members and Employees:

Question: How are expenses for board members treated differently than expenses for employees?

Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Distinction between Board Members and Employees:

Answer: The only distinction is that per Section 15 of the Act, any board member expense must be approved by a roll call vote at an open meeting of the governing board. For employees or officers, under the Act, only expenses that exceed the maximum amount in the local agency's ordinance or resolution need to be approved by a roll call vote. Please note that a **roll call vote is required for Board approval of any expenditure of public funds.**

Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Separate Roll Call Votes:

Question: Does the roll call vote required by Section 15 of the Act need to be a separate vote dealing solely with travel-related, or can that vote be part of the Board's general roll call vote to pay the local public agency's general monthly expenditures?

Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Separate Roll Call Votes:

Answer: P.A. 99-604 is not clear on this point. The conservative approach is to **approve the travel-related expenses separately**, given the purpose of P.A. 99-604, and Section 2(e) of the Open Meetings Act (“OMA”) which states that “[f]inal action shall be preceded by a public recital of the matter being considered and other information that will inform the public of the business being conducted.” 5 ILCS 120/2(e). The **board meeting agenda** should also have an agenda item for approval of travel related expenses.

Alternatively, the motion for a roll call vote on all monthly bills and expenses presented to the Board for approval could be supplemented (if that month’s bills and expenses include travel related expenses) with the phrase **“including travel-related expenses of members of the Board of Education, and of employees.”**

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Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Submission of Expenses:

Question: Does an employee need to submit a different expense form for each various expense on a trip? What if a local public agency has various satellite offices or buildings and a board member, officer or employee is regularly required to travel to the offices?

Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Submission of Expenses:

Answer: Travel, meal or lodging expenses cannot be approved unless the person seeking reimbursement submits the **standardized expense form** required in Section 20. However, the **Act does not require submission of a separate expense form** for each separate travel, meal or lodging expense. An employee, officer or board member can submit an expense form for all multiple travel-related expenses, even for different trips, but the expense form must include the **dates, nature of official business, and the receipts or estimate of the cost of travel**. If an employee, officer or board member regularly travels between satellite offices, the person seeking reimbursement can submit an expense form to reimburse the estimated lump sum costs of the regular travel (such as mileage, tolls, meals, etc.).

Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Pre-Approval of Expenses:

Question: Does the Act require pre-approval of travel-related expenses?

Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Pre-Approval of Expenses:

Answer: No. Section 20(1) of the Act specifically states that the Board may approve, and thus reimburse, expenses that have not been incurred and those that have already incurred. However, a local agency may want to require pre-approval simply to avoid any disputes of whether an expense that was already paid for was reasonable or necessary for official business.

Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Automobile Expenses:

Question: Does the Act apply to monthly automobile allowances for administrative personnel under **individual employment contracts**? Must administrators now complete the standardized expense reimbursement form required by the Act for these allowances?

Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Automobile Expenses:

Answer: No. We believe it is appropriate to characterize the monthly automobile allowance not as reimbursement, but as a **contractual employment benefit**. Typically, these payments are intended to reimburse the administrator for use of their car while carrying out official duties, but it is understood that to the extent the allowance is not used for that purpose, the balance will count as taxable compensation to the administrator.

Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Board Member Meals:

Question: Does the Act apply to expenses incurred when board members go out together **locally** for a holiday dinner or ceremonial post-graduation dinner, held not for the purpose of conducting public business but to promote collegial relations among board members?

Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Board Member Meals:

Answer: Assuming that the college pays for these **locally incurred expenses unrelated to travel**, this type of disbursement should qualify as a college administrative expense, not a travel-related expense for which individual board members are seeking reimbursement. (The usual caution about reasonable costs and not expending public funds for purchases of alcohol at what is essentially a board social event would be germane here.) Our interpretation is based on the Act's focus on travel and the associated expenses. A broader reading of the Act would require Board approval of all meal expenses even those not part of an overall travel expense.

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Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Entertainment Expenses:

Question: If a college allows board members to attend plays, music recitals and other cultural events held at its performing arts center without charge, does that constitute “entertainment” within the meaning of the Act, even though the board member is not being reimbursed for anything?

Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Entertainment Expenses:

Answer: No. The event may be entertaining, but it falls **outside the scope of travel-related expenses** which the Act aims to control, in that no reimbursement will occur. Also, the board member's presence may be seen as ancillary to the purpose of the entertainment event.

Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Expenses for Spouses:

Question: Does the Act prohibit expenses for board member and employee spouses to attend local community events where spouse attendance is expected or encouraged?

Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Expenses for Spouses:

Answer: No. The Act does not prohibit reimbursement of expenses for spouses to attend these events. Given the nature of the Act and the current publicity of these expenses, we recommend having your board approve any expenses for spouses prior to the event, and **only authorized in limited situations.**

Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Emergency Expenses:

Question: What about expenses incurred because of emergency or extraordinary circumstances?

Local Government Travel Expense Account Act – Hypothetical Compliance Issues

Emergency Expenses:

Answer: Section 10 of the Act states that the regulations may allow for approval of expenses that exceed the maximum allowable travel, meal, or lodging **expenses because of an emergency**. Section 15 already permits the board to approve expenses that exceed the maximum without declaring that the expenses were due to emergency, but by **explicitly authorizing higher expenditures** due to emergency in your policy, the board will have a stronger basis to approve the expenditure.

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Changes to the Illinois Liquor Control Act
and How It Impacts Your College

Liquor Control Act

The Illinois Liquor Control Act (“Act”) was recently amended (P.A. 99-0550) to permit community colleges to serve alcohol in buildings under their control for public events that are not student-related activities.

Liquor Control Act

Section 6-15 of the Liquor Control Act provides generally that alcohol may not be sold or delivered in any building belonging to or under the control of the State of Illinois or any political subdivision unless there is an exception in the Act.

Liquor Control Act

The **general prohibition** on selling and delivering alcohol is then followed by **numerous specific exceptions**. These specific exceptions have been added piecemeal over the last 80 years since the original adoption of the Act.

Liquor Control Act

Before Public Act 99-0550, several community colleges had received some form of specific statutory **authority to sell and deliver alcohol** in public buildings, but most had not.

Liquor Control Act

And even before the changes brought by Public Act 99-0550, all community colleges had **some limited authority** to sell and deliver alcohol in connection with conference and convention type activities of an educational, political or cultural nature.

Exceptions Before Recent Change

Two existing exceptions to Section 6-15 apply generally to certain activities of community colleges:

Previous Exceptions

1. Alcohol may be **delivered to and sold** at “any airport, golf course, faculty center, or facility in which conference and convention type activities take place belonging to or under control of any **state university or public community college district**, provided that with respect to a facility for conference and convention type activities alcoholic liquors shall be limited to the use of the convention or conference participants or participants in cultural, political or educational activities held in such facilities, and provided further that the faculty or staff of the state university or a public community college district, or members of an organization of students, alumni, faculty or staff of the state university or a public community college district are active participants in the conference or convention..” 235 ILCS 5/6-15.

Previous Exceptions

2. Alcohol may be delivered to and sold by a **catering establishment** which has rented facilities from a public community college district. 235 ILCS 5/6-15.

2016 Amendments

Though the new Act now more **broadly permits community colleges to sell and deliver alcohol**, colleges must be mindful that they can only sell and deliver alcohol at events their boards determine are public events that are not student-related activities.

Significantly, community **colleges must obtain a liquor license** from the local municipality where the facilities are located (or from the county where the facility is in an unincorporated area) and from the State of Illinois before liquor can be sold at retail.

2016 Amendments

Additionally, before public universities or colleges can sell or deliver alcohol in their buildings, the Act requires the boards of public universities and community colleges to **approve a written policy** concerning the types of events at which alcohol would be allowed.

2016 Amendments

In preparing written policies, boards are directed to consider:

2016 Amendments

(i) whether the event is a student activity or student-related activity

2016 Amendments

(ii) whether the physical setting of the event is conducive to control of liquor sales and distribution;

2016 Amendments

(iii) the ability of the event operator to ensure that the sale or serving of alcoholic liquors and the demeanor of the participants are in accordance with State law and community college district policies;

2016 Amendments

(iv) the anticipated attendees at the event and the relative proportion of individuals under the age of 21 to individuals age 21 or older

2016 Amendments

(v) the ability of the venue operator to prevent the sale or distribution of alcoholic liquors to individuals under the age of 21;

2016 Amendments

(vi) whether the event prohibits participants from removing alcoholic beverages from the venue; and

2016 Amendments

(vii) whether the event prohibits participants from providing their own alcoholic liquors to the venue.

2016 Amendments

Of course, these considerations are in addition to any other factors that boards may consider relevant and important.

LOCAL MUNICIPAL LIQUOR CONTROL

The Illinois Liquor Control Act grants municipalities (and counties where the property is unincorporated) **broad powers over local retail liquor licenses**. These include the power to:

- set the **number of licenses** to be issued within the municipality,
- the power to determine the **hours of operation**,
- to determine the **qualifications of an applicant** for a local liquor license,
- to prohibit liquor sales completely if the municipality is successful in having a local referendum passed in this regard.

Local Municipal Liquor Control

Generally Colleges must obtain a local liquor license from the local liquor control commissioner which is typically the mayor or village president.

Local Municipal Control

Given that colleges are not like the typical liquor license applicant, it is usually a good idea for a college to **work together with the local municipal administration** to create a special liquor license classification to suit the needs of the college.

Local Municipal Control

Additional matters that may be required as part of the local liquor license:

License fees. Municipalities have the authority to establish license fees for the different types of licenses that it may issue. 235 ILCS 5/4-1. Annual license fees of **\$1,000 to \$4,000** are common;

Local Municipal Control

Additional matters that may be required as part of the local liquor license:

Location: The Liquor license will usually provide that alcohol sales may only take place at the **location provided in the application** for the liquor license;

Local Municipal Control

Additional matters that may be required as part of the local liquor license:

Hours. The liquor license will probably provide that alcohol sales may only take place during certain specific hours stated in the license (for example 11:00 a.m. – 2:00 a.m.);

Local Municipal Control

Additional matters that may be required as part of the local liquor license:

Background check. The municipality may require that the applicant submit to a criminal background check and fingerprinting;

Local Municipal Control

Additional matters that may be required as part of the local liquor license:

Dram shop insurance. The municipality will usually require the applicant to procure dram shop liability insurance in a certain amount and provide and submit a certificate of insurance as of procurement; and

Local Municipal Control

Additional matters that may be required as part of the local liquor license:

BASSET training may be required.
(Beverage Alcohol Sellers and Servers Education
and Trainng)

State Liquor License

Once an applicant for a local liquor license has secured the local license from the municipality or county, it must then apply for and obtain a **state retailers' liquor license** from the Illinois Liquor Control Commission. This step is largely a formality if a local license has been obtained, but necessary nonetheless.

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Update on Amendment to Business
Enterprise for Minorities, Females, and
Persons with Disabilities Act

What is the Business Enterprise Act?

- The Business Enterprise for Minorities, Females, and Persons with Disabilities Act (“the Act”), 30 ILCS 575/1, *et seq.* is a law requiring state agencies and public institutions of higher education to set aspirational goals to increase the participation of businesses owned by minorities, females, and persons with disabilities in contracts that these public bodies award.
- The Act was **amended on August 25, 2015**, including the following changes:
 - Applicability to public institutions of higher education, including community colleges.
 - Expanded scope to include all contracts that colleges enter into.
 - Clarification that the goals are “aspirational”.
 - Requirements for college compliance and Business Enterprise reporting requirements.
- Generally sets an aspirational goal of 20% of college contracts awarded to firms owned by minorities, females, and persons with disabilities. Some variances for each group depending on the type of contract.

Act's Requirements for Community College Compliance?

- Adoption of policies and implementation of procedures for increasing use of firms owned by minorities, females, and persons with disabilities.
- Appointment of liaison to Business Enterprise Council.
- Reporting Requirements:
 - › File annual compliance plans with the Business Enterprise Council.
 - Includes designation of the college's liaison officer and an outline of the college's goals, policy statements, and procedures.
 - › File annual utilization report with the Business Enterprise Council for reporting for FY 2017.
 - Includes the college's report on its utilization of businesses owned by minorities, females, and persons with disabilities for the preceding fiscal year, a mid-fiscal year report on the utilization for the current year, and a self-evaluation on the college's efforts to meet its goals.
- **Business Enterprise Council is working with ICCB** to develop reporting requirements.
- Notice to the Business Enterprise Council of proposed contracts for professional and artistic services.
- Use of bid forms identifying the bidder's percentage of disadvantaged business utilization plans and percentage of business enterprise program utilization plan.

Bid Requirements and Utilization Plans

- The Act requires that for any contract required by law for the award of a State contract, each responding bid must include: (1) the bidder's name; (2) the bid amount; (3) the percentage of the bid awarded to business enterprise program utilization plan. (30 ILCS 575/7(5)).
- What if lowest responsible bidder does not meet the aspirational goals?
 - › 10 day cure period for bidder to comply with college's aspirational goal.
 - › If unable to cure, examine "good faith" efforts. College can disqualify bidder if no good faith, or can seek a waiver from the Business Enterprise Council if good faith.
 - › Key is "good faith efforts".

Bidding and the “Lowest Responsible Bidder” Requirement

- Pursuant to 110 ILCS 805/3-27.1, the *Illinois Public Community College Act* requires that contracts for the purchase of supplies, material, or work exceeding \$25,000 be awarded to the lowest responsible bidder, except when exempt from bidding.
- How can a college aspire to hit the aspirational goals if the college is required to award contracts to the lowest responsible bidder?
- Public entities’ consideration of contractors’ affirmative action measures can comply with the “lowest responsible bidder” standard. *See S.N. Nielsen Company v. Public Building Comm’n of Chicago*, 81 Ill. 2d 290 (1990).
- Bid Challenges – Documentation of bidders’ good faith efforts (or lack thereof) may be significant evidence in proving bidder’s “responsibility” under *S.B. Nielsen* standard.

QUESTIONS?

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- Ken Florey concentrates his practice representing public and private clients, including municipalities, school districts, community colleges, private owners, contractors and design professionals regarding land use, municipal law, construction, tax, finance and litigation.
- Ken was the Chair of the DuPage County Bar Association's Local Government Committee. He served as a Trustee for the Village of Lombard for eight years. He was appointed Special Assistant Attorney General to prosecute and defend construction litigation claims on behalf of the Illinois Capital Development Board. Ken is also a member of the IASBO Service Associate Advisory Committee.

Education

- J.D., DePaul University College of Law, 1992; Managing Editor, *DePaul Journal of Art and Entertainment Law*(1991-92)
- B.A., University of Illinois at Urbana-Champaign, 1989

Admitted to Practice

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