

CLIENT ALERT



Municipal and Local Government Offices May Remain Open on Election Day

With election day quickly approaching, a new decision has come out of the Illinois Seventh Judicial Circuit, Sangamon County, declaring that local government offices are not required to shut down on November 3, 2020 for election day.

Public Act 101-642 amended the election code by adding Section 2B-10, declaring November 3, 2020 (Election Day 2020) a State holiday. The Act also declared the day a legal school holiday and mandated that “all government offices...shall be closed” on November 3, 2020, unless authorized as a polling place.

In *Illinois Municipal League v. Illinois State Board of Elections*, the Illinois Municipal League (“IML”), together with the Village of Bolingbrook, a home rule municipality, and the Village of Southern View, a non-home rule municipality, brought suit against the Illinois State Board of Elections, seeking a declaratory judgment stating that this amendment to the election code (Section 2B-10) was not meant to apply to local municipalities.

On Friday, October 16, 2020, in a fairly succinct decision, the court found for the municipalities and IML and determined Section 2B-10’s declaration that all government offices should be closed on November 3, 2020 does not apply to municipal and other local governments for the following reasons:

- When the question of whether the statute applies to local governments was posed during debates on the house floor, it was made clear that the main concern for the legislature when drafting 2B-10 was to turn schools into alternative polling places during the COVID-19 pandemic (in lieu of nursing homes, a typical but potentially unsafe polling place during the pandemic), and that the statute was not meant to apply to local governments and private businesses.

- Generally, if the state wishes to circumvent the authority of home rule municipalities in a given area, language expressly stating the state's desire to exert exclusive control in that area is required. No such language was found in the section 2B-10, meaning home rule municipalities are not bound by the state's requirement that all government buildings be closed on November 3, 2020.
- Section 2B-10 is a state-initiated statutory action causing municipalities to incur additional costs. Therefore, if the legislature fails "to make appropriations allowing reimbursement of expenses," local governments are not required to follow the mandate. The legislature allowed for reimbursement to school districts for cleaning costs associated with using schools for polling places on election day but did not include language regarding such reimbursements for municipalities. Since requiring offices to close would result in costs to municipalities, "Section 2B-10 constitutes an unfunded mandate" and thus is not binding on local governments.

Therefore, while State government buildings and school buildings must be closed on November 3, 2020 for election day, local municipal and other local government offices are not required to close.

Ottosen DiNolfo Hasenbalg & Castaldo, Ltd.'s ***Client Alert*** is issued periodically to keep its clients and other interested parties informed of legal developments that may affect or otherwise be of interest to its readers. Due to the general nature of its contents, the comments herein do not constitute legal advice and should not be regarded as a substitute for detailed advice regarding a specific set of facts. Questions regarding any items should be directed to our main office at:

OTTOSEN DINOLFO HASENBALG & CASTALDO, LTD.
1804 North Naper Boulevard, Suite 350, Naperville, Illinois 60563
(630) 682-0085 ottosenlaw.com

Copyright 2020 by
OTTOSEN BRITZ KELLY COOPER GILBERT & DINOLFO, LTD.

All rights reserved. Pursuant to Rules 7.2-7.4 of the Illinois Rules of Professional Conduct, this publication may constitute advertising material.