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October 3, 2019

To: UCCI Membership

Re: Tort Liability Fund Expenditures on Security Guards

Issue:

Whether it is permissible for a County to pay employee compensation for security guards with funds from the tax levy authorized pursuant to Section 9-107 of the Local Governmental and Governmental Employees Tort Immunity Act¹ (the "Act"), commonly referred to as the "tort liability levy".

Analysis:

The Act's stated purpose "is to provide **an extraordinary tax for funding expenses relating to** (i) tort liability, (ii) liability relating to actions brought under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Environmental Protection Act, but only until December 31, 2010, (iii) insurance, and (iv) risk management programs."² Section 9-107(b) of the Act states, in relevant part, the following:

A local public entity may annually levy or have levied on its behalf taxes upon all taxable property within its territory at a rate that will produce a sum that will be sufficient to: (i) pay the cost of insurance, individual or joint self-insurance (including reserves thereon), including all operating and administrative costs and expenses directly associated therewith, claims services and risk management directly attributable to loss prevention and loss reduction, legal services directly attributable to the insurance, self-insurance, or joint self-insurance program, and educational, inspectional, and supervisory services directly relating to loss prevention and loss reduction, participation in a reciprocal insurer as provided in Sections 72, 76, and 81 of the Illinois Insurance Code, or participation in a reciprocal insurer, all as provided in settlements or judgments under Section 9-102, including all costs and reserves directly attributable to being a member of an insurance pool, under Section 9-103

¹ 745 ILCS 10/9-107.

² 745 ILCS 10/9-107(a) (emphasis added).

Revenues derived from such tax shall be paid to the treasurer of the local taxing entity as collected and used for the purposes of this Section and of Section 9-102³, 9-103⁴, 9-104⁵ or 9-105⁶, as the case may be.⁷

However, the General Assembly noted that “it has become apparent that some units of local government are using the tax revenue to fund expenses more properly paid from general operating funds. These uses of the revenue are inconsistent with the limited purpose of the tax authorization.”⁸ Consequently, the Act provides that “(i) the use of the tax revenue authorized by this Section for purposes not expressly authorized under this Act is improper and (ii) the provisions of this Section shall be strictly construed consistent with this declaration and the Act's express purposes.”⁹ In other words, in order for tort liability levy funds to be expended, the purpose for which they will be spent must be specifically and expressly stated in the Act.

The Attorney General previously opined that “The Tort Immunity Act simply does not apply to contractual obligations or claims. Therefore, it appears that the use of funds raised pursuant to the special tax levy authorized by section 9-107 of the Act to pay for contractual obligations such as employee medical benefits or prescription drug coverage would be an improper use of those funds.”¹⁰

The Second District Appellate Court, in defining the phrase “risk management,” as used within the Act, adopted the definition of the tax objector’s expert that “risk management is a process that consists of: identifying and analyzing loss exposures; selecting a technique or combination thereof to be used to handle each exposure; implementing the chosen techniques; and monitoring the decisions made and implementing appropriate changes.”¹¹ In that case, the Court held as follows:

[The] Park District paid portions of the salaries of some of its supervisory and administrative employees, maintenance workers, recreational workers, and police and **security employees** by reviewing job descriptions and identifying positions that were best suited to help reduce or prevent tort liability exposure. However, absent from [the] Park District's practices are the four elements of the risk management process outlined by *Saxton-Williams*. There was no evidence presented that [the] Park District engaged in a process whereby it identified loss exposures, selected and implemented

³ “A local public entity is empowered and directed to pay any **tort** judgment or settlement for compensatory damages (and may pay any associated attorney's fees and costs) for which it or an employee while acting within the scope of his employment is liable in the manner provided in this Article.” 745 ILCS 10/9-102.

⁴ Authorizes local public entities to via insure or self-insure against property damage, tortious acts, Workers Compensation liability, or unemployment insurance liability. 745 ILCS 10/9-103.

⁵ Authorizes installment payments for tort judgments and terms thereof. 745 ILCS 10/9-104.

⁶ Authorizes issuance of bonds for the purpose of creating a reserve for or for the payment of any cost, liability or loss against which such entity may protect itself or self-insure pursuant to Section 9-103 and/or otherwise related to tort judgments or settlements. 745 ILCS 10/9-105.

⁷ 745 ILCS 10/9-107(b) (emphasis added).

⁸ 745 ILCS 10/9-107(a).

⁹ 745 ILCS 10/9-107(a).

¹⁰ Il. Att’y. Op. I-03-008 (October 30, 2003) (internal citations omitted).

¹¹ *In re Objections to Tax Levies of Freeport Sch. Dist. No. 145*, 372 Ill. App. 3d 562, 582 (2d Dist. 2007).

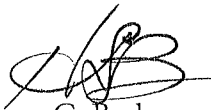
techniques to address each exposure, and monitored the effectiveness of its chosen techniques.¹²

Therefore, payments towards compensation of security guards would not constitute expenses relating to a risk management program contemplated by the Act for which tort liability levy funds could be used unless the four identified elements could be met.

Conclusion:

It is this Office's opinion that compensation of security guards using funds from the tort liability levy revenue is not permitted because it is not expressly authorized by the Act and because no facts have been provided that indicate the security guards would fall within the meaning of "risk management" using the four-factor test set forth above.

At the request and direction of UCCI this opinion was prepared by
GIFFIN, WINNING, COHEN & BODEWES, P.C.



Herman G. Bodewes



Jason E. Brokaw

¹² *In re Objections to Tax Levies of Freeport Sch. Dist. No. 145*, 372 Ill. App. 3d 562, 584–85 (2d Dist. 2007) (emphasis added).