

Municipal Law News

Foster Swift Administrative & Municipal Group

Upcoming Events:

WEBINAR

Ask a Lawyer: Hot Zoning Topics

DATE: May 18, 2010

TIME: 11:30 a.m. - 12:30 p.m.

Have questions about zoning, but don't have time to travel to a seminar? Foster Swift has you covered.

Join Foster Swift's municipal attorneys for a free webinar that will explore hot-button zoning issues affecting Michigan municipalities. Stay ahead of the game without leaving your office. Take home helpful information and have your questions answered during a Q&A session following a brief presentation.

Never done a webinar before? No worries. Participation is free and user friendly.

Look for more information and registration details in the April issue of the Foster Swift *Municipal Law News*.

SEMINAR

Implementing Partnerships for Infrastructure

WHERE: Henry Center, Lansing, MI

WHEN: May 11, 2011

The program will explore the rapid growth in the use of Public Private Partnerships, and the implications for economic development.

For more information and registration details, go to www.ncppp.org.

Municipality May Require Employees to Disclose Medical Information When Returning From Sick Leave

by: Michael R. Blum

In a decision issued February 23, 2011, the U.S. Court of Appeals for the Sixth Circuit, which covers Michigan, found that a municipal employer did not violate its employees' legal rights by requiring workers returning from sick leave or restricted duty to submit a doctor's note disclosing the "nature of the illness" to their immediate supervisors.

The City of Columbus Division of Police issued a directive that required returning employees to submit to their immediate supervisor a doctor's note that states the nature of the illness and whether the employee was capable of returning to regular duty. Employees, upset that they had to provide medical information to their immediate supervisors, filed a class action lawsuit claiming violations of the Rehabilitation Act and privacy provisions of the United States Constitution.

The federal trial court sided with the employees, finding the directive to be overly intrusive. The Sixth Circuit appellate court disagreed, siding with the employer. It determined that it is lawful for municipalities to ask a returning employee about his or her general diagnosis, even if it could lead to information about an employee's disability. The appellate court further held that even if Columbus's policy could be characterized as a disability-related inquiry, it was okay because

it applied uniformly to all employees returning from leave. This is consistent with the Equal Employment Opportunity Commission's stance - that an employer may ask workers requesting or returning from sick leave to provide a doctor's note if the employer's policy is uniformly applied.

The federal appellate court ruled that Columbus's directive did not violate employee privacy rights under the United States Constitution. It found that the directive was not an "unwarranted intrusion" into "all areas of an employee's personal medical information" without sufficient justification. So there was no violation of privacy rights protected under the Constitution.

This decision provides assistance to municipalities in their efforts to guard against fraudulent use of sick or leave time. However, to do so, municipalities must implement and apply non-discriminatory policies, uniformly apply such policies to all employees returning from sick leave or restricted duty, and ensure compliance with other aspects of federal or state laws governing employee leaves of absence.

If you have questions about this case summary or non-discriminatory policies regarding sick leave or restricted duty, please contact **Michael Blum** at **248.785.4722**.

New Law Allows Creative Public-Private Partnerships at Municipal Level – A Potential Option to Help Pay for Public Projects

by: David M. Lick & Nicholas M. Oertel

All municipalities know too well the challenges to pay for transportation and public infrastructure costs. This has forced creativity in finding or stretching funding to make improvements. Municipalities should note a new law just passed that might provide for a workable, creative option

to help get funding for public projects - involving the use of public-private partnerships.

A public-private partnership involves public and private entities partnering to achieve a greater level of private sector involvement in public

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works projects, such as road construction. Before this new law, some municipalities have pursued a type of public-private partnerships (contract special assessments, installment purchase agreements, etc.) as an alternative method to help pay for transportation and other public infrastructure projects. But the new law gives express authority to municipalities to pursue specific types of public-private partnerships.

The new law is called the Private Investment Infrastructure Funding Act (the "Act"), MCL 125.1871 *et seq.* It permits more private sector involvement in public projects, helping municipalities find funding sources for those projects. Briefly, here are some of the highlights of the Act:

- The Act promotes public-private partnerships at the local level. Generally speaking, the Act lets municipalities enter into collaborative relationships (called "negotiating partnerships") to develop "public facilities," and solicit a private sector entity to fund that project through a bid process.
- The Act broadly defines "public facilities" to include roads, road improvements and beautification, parking facilities, parks, bridges, ponds, canals, utility lines and pipes, wastewater facilities, recreational facilities, and light and commuter rail projects.
- The Act allows the "public facility" to be financed through multiple arrangements, including (i) proceeds from a special assessment district, or (ii) soliciting private sector funding sources through a bid process.
- If private sector investors are tapped for financing, the Act sets out a repayment scheme that, generally speaking, lets the private investors recover funds loaned with a return on investment via tax increment revenues pledged by the collaborating municipalities.

If you have any questions regarding the Act or how it may help municipalities pay for public projects, please contact any member of Foster Swift's Municipal Team.

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