



VILLAGE OF OAK PARK
LAW DEPARTMENT

MEMORANDUM

To: Honorable Mayor Anan Abu-Taleb and Board of Trustees
From: Paul L. Stephanides, Village Attorney
Copy: Cara Pavlicek, Village Manager
Date: September 10, 2020
Re: Village Clerk Duties

INTRODUCTION

I have been asked to update my previous memorandums on the duties of the Village Clerk under applicable state statutes and Village Code provisions.

DISCUSSION

I. The Village Board Determines the Village Clerk's Duties.

The Village Clerk's duties are described by state statute and the Village Code. Those duties that are prescribed by the Village Code can be altered, amended, or deleted in their entirety from the Code. Furthermore, duties performed by the Clerk's office can be transferred by law to another Village department so long as the Clerk's position is not eliminated. *People ex rel. Hanrahan v. Beck*, 54 Ill.2d 561, 301 N.E.2d 281 (1973).

In the *Hanrahan* case cited above, the Cook County Board of Commissioners adopted an ordinance creating the position of county comptroller, which provided that the comptroller position was to be filled by appointment. Following an appointment of a comptroller, the Cook County State's Attorney filed a declaratory judgment action against the appointee seeking to declare the ordinance unconstitutional on the ground that the Board attempted to contravene a state statute which directed the county clerk to perform the duties and functions vested in the newly created comptroller's office. The Illinois Supreme Court found that the County Board had the authority to transfer the duties and functions under its home rule powers. The Court stated:

Since the adoption of the 1970 constitution, there has been no legislative enactment which would limit the power of the County Board exercised in this case. Section 6(f) of article VII, however, provides that a home-rule county is subject to the provisions of section 4 of that article as it pertains to provisions for its officers, their selection method and term of office. Section 4(d) authorizes the legislature and county to prescribe the duties, functions and powers of county officers. After consideration of the pertinent constitutional provisions, we believe that the home-rule philosophy, as enunciated in *Kanellos*, is applicable, thereby permitting a

home-rule county to validly transfer the powers, duties and functions of county officers who are subject to the provisions of section 4 of article VII.

* * * *

In so holding we are not unmindful of section 4(c), which proscribes the elimination of the office of county clerk by methods other than county-wide referendum. But this case is not one in which “elimination” of an office or any major step in that direction is involved, and we express no opinion as to the validity of transfer of duties which substantially emasculate county offices eliminable only by referendum.

Id., 54 Ill.2d at 565, 301 N.E.2d at 283-84.

The constitutional provision upon which the Court in *Hanrahan* relied, section 6(f) of article VII, is also applicable to the Village due to the Village’s status as a home rule municipality. That provision provides as follows:

A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article. A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law. A home rule county shall have the power to provide for its officers, their manner of selection and terms of office in the manner set forth in Section 4 of this Article.

Ill. Const. art. VII, § 6(f). Thus, the Village may also transfer the Clerk’s duties to another position or department within the Village pursuant to the Illinois Constitution, or eliminate duties so long as the Village does not eliminate the Clerk’s position.

A. Current Duties of the Village Clerk.

The Village Clerk has the following statutory duties:

1. Attend all meetings of the Village Board, including executive sessions except when the clerk is the subject of an executive session, and keep a full journal of the proceedings;
2. Keep the corporate seal of the Village, and keep all books, records, ordinances, resolutions, and papers belonging to the Village, the custody and control of which are not given to other officers; and
3. Make preparations for and supervise all Village elections.

65 ILCS 5/3.1-35-90(a); 65 ILCS 5/1-1-8; Oak Park Village Code at Sec. 2-10-1. The Village Code requires the Village Clerk to maintain a list of all ordinances and resolutions approved by the Board of Trustees and to deliver to the officers of the Village and to all Board committees all resolutions and communications referred to such officers or committees. Oak Park Village Code at Sec. 2-10-5 & 2-10-8.

In addition to the above statutory duties, the Clerk is authorized to administer oaths along with several other Village officials, including the Mayor and the Plan Commission Chair. 65 ILCS 5/3.1-15-20. The Village may authorize other municipal officers to administer oaths as well. 65 ILCS 5/3.1-15-20. After an oath is administered, it is to be filed in the Clerk's office. 65 ILCS 5/5-3-9. Subject to budgetary authority, the Clerk may also appoint a Deputy Clerk. The applicable statute allowing for the appointment of a deputy clerk provides in pertinent part:

In municipalities of less than 500,000, the municipal clerk, when authorized by the corporate authorities, may appoint the number of deputy clerks necessary to discharge the functions and duties of the office of municipal clerk, who need not be a resident of the municipality. The corporate authorities of the municipality may limit the number of deputy clerks that the municipal clerk may appoint.

65 ILCS 5/3.1-30-10(b). Currently, the Village Code authorizes the Clerk to appoint one (1) Deputy Clerk. Oak Park Village Code at Sec. 2-10-9.

The Clerk's office and the Mayor are authorized to receive service of process in litigation filed against the Village. 735 ILCS 5/2-211. Finally, the Clerk's office performs other duties as assigned by the Village Board. 65 ILCS 5/3.1-25-90(b); Oak Park Village Code at Sec. 2-10-10.

B. Duties of the Village Manager and Village Clerk Regarding Village Records.

The records required to be kept by the Clerk currently are petitions, ordinances, resolutions, and lawsuits served upon the Village. Oak Park Village Code at Secs. 2-10-1, 2-10-7 & 2-10-8. The Village Manager has the following duties with respect to Village records:

2-4-7: RECORDS; CERTIFICATES; PROVIDE PERSONNEL TO OTHER OFFICERS:

The Village Manager shall be responsible for the preparation and maintenance of all municipal records required by law to be kept by the Village and not by a specific officer. Where the law makes it the duty of a specific officer to keep or maintain records, the Manager shall make available to such officer all necessary clerical assistance for the preparation of such records and shall make available a place for the custody of such records. In compliance herewith the Village Manager shall make available to the Village Clerk, stenographic or clerical assistance necessary for the preparation of the journal of proceedings of the Board of Trustees, and the record of ordinances and all other documents which by law the Village Clerk is required to keep; and the Manager shall perform similar service for the Village Treasurer in the maintenance of bond

registers, and all other records or documents which by law the Village Treasurer is required to keep or prepare. Where the law requires or provides for certification of any records or documents by any officer of the Village, the Manager shall cause such records or documents to be properly prepared and presented to such officer for his signature.

Other than records of the Village Board and petitions and lawsuits, remaining Village records are required to be kept by the Village Manager.

C. The Village Manager is Required to Ensure the Village's Compliance with the Local Records Act.

The Village is required to comply with the Illinois Local Records Act. 50 ILCS 205/1 *et seq.* The Local Records Act governs the Village's disposition of public records, which are defined as follows:

"Public record" means any book, paper, map, photograph, born-digital electronic material, digitized electronic material, electronic material with a combination of digitized and born-digital material, or other official documentary material, regardless of physical form or characteristics, made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business and preserved or appropriate for preservation by such agency or officer, or any successor thereof, as evidence of the organization, function, policies, decisions, procedures, or other activities thereof, or because of the informational data contained therein.

50 ILCS 205/3. The Act requires that public records "not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law." 50 ILCS 205/4. A violation of this requirement is a Class 4 felony. 50 ILCS 205/4.

The Local Records Act does not proscribe what Village employee has the duty to meet its requirements. Similarly, the Village Code also does not contain any such provision.

The Village Manager is "charged with the enforcement of all laws and ordinances within the municipality insofar as their enforcement is within the powers of the Village." Oak Park Village Code at Sec. 2-4-2; See also 65 ILCS 5/5-3-7(1). Thus, under this section, the Manager is charged with the enforcement of the Local Records Act. The Village Manager has assigned the administration of the Local Records Act to the Chief Financial Officer. The Village Clerk is responsible for all records related to her office under the Local Records Act similar to other departments and it is within the prerogative of the Manager to maintain these assignments or transfer them unless otherwise provided by the Village Board.

D. Duties Under the Freedom of Information Act and Open Meetings Act.

The Village is required to comply with the Illinois Freedom of Information Act ("FOIA"). 5 ILCS 140/1 *et seq.* The Freedom of Information Act governs requests by persons for public records. Section

3.5 of the FOIA provides that the Village is required to “designate one or more officials or employees to act as its Freedom of Information officer or officers.” 5 ILCS 140/3.5. Such officers or employees are required to receive FOIA requests and ensure that the Village responds to such requests in accordance with the FOIA. *Id.*

Similar to the Local Records Act, the FOIA does not proscribe which Village employees are FOIA officers, nor does the Village Code contain such a provision. Pursuant to Resolution 19-52 adopted by the Village Board on January 28, 2019, the Village Clerk is one of three FOIA officers for the Village with the Village Clerk serving as the primary FOIA officer. As primary officer, all questions regarding FOIA are to be directed to the Village Clerk and other duties related to FOIA were assigned to the Village Clerk per the agenda item summary for Resolution 19-52.

The Open Meetings Act requires the Village to “designate employees, officers, or members to receive training” regarding compliance with the Act. 5 ILCS 120/1.05. Also, every Village elected official and appointed member of a Village board or commission must complete an electronic training curriculum administered by the Illinois Attorney General’s Public Access Counselor. A certificate of completion must be filed “with the public body.” 5 ILCS 120/1.05.

Similar to the Local Records Act, the Open Meetings Act does not proscribe which Village employees must receive training, nor does the Village Code contain such a provision. The Act also does not proscribe who must maintain the certificates of completion for the training. Thus, the Village Manager has these duties. Also, since it is the duty of the Village Manager to enforce all laws applicable to the Village as set forth above, it is the Manager’s duty to ensure compliance with the Open Meetings Act, including the issuance of all required meeting notices under the Act.