



Contact: Mark Franz, Village Manager  
Phone: 630-469-5000

FOR IMMEDIATE RELEASE  
November 8, 2011

Stewart Diamond, Village Attorney  
312-782-7606

## **Judge Rules Village has Jurisdiction in College of DuPage Case**

Glen Ellyn, IL – On November 8, 2011, Judge Terrence M. Sheen of the Circuit Court of DuPage County issued a much awaited order in the lawsuit filed by the College of DuPage against the Village of Glen Ellyn. The College had argued that it was immune from all Village ordinances. Judge Sheen made the following findings:

- Acknowledges that the two units of government have had an amicable relationship over the years
- The legislature does not grant exclusive jurisdiction to the Community College Board
- The College is not part of the state-wide education system and likened them to public corporations rather than an arm of the State
- College is not a State agency, but a unit of local government
- “Public Community College Act” grants some autonomy to community colleges to decide how to handle health and safety issues, but it does not legislatively pre-empt the other government agencies from regulating or inspecting buildings
- “Public Community College Act” implicitly recognizes a degree of intergovernmental cooperation may be necessary and the concurrent exercise of power with other entities is completely feasible; hints at the use of joint agreements
- Under Illinois law, if there is a dispute concerning conflicting State and Home-rule power, courts perform a three-part inquiry to determine whether a purported exercise of home-rule power by a municipality is valid:
  1. Municipality exercise of power must pertain to the municipality’s government and affairs.
  2. The General Assembly must not have specifically pre-empted the power or function.

3. If the first two steps are met, then it is up to the courts to determine the proper relationship between the local ordinance and the relevant state statute. The question is whether the two regulations allow for the power to be exercised concurrently. (This should be a rare occurrence.)
- Liquor control is subject to state and local government, therefore, the Village can mandate a local liquor license

Stewart Diamond, the Village Attorney, said, “We are very pleased with this thoughtful decision and respect the ruling. It is now clear that as a home-rule community, Glen Ellyn has the power to fairly apply its ordinances to the College of DuPage. The College’s argument that it was only regulated by the State Community College Board or that it was part of State government was flatly rejected. We hope the College will rethink its position on all these issues. The opinion mentions the ability of working towards an intergovernmental agreement. That should be possible here. In the absence of an intergovernmental agreement, this decision gives the Village the ability to apply its ordinances, and to expect the College to acknowledge its jurisdiction.”

Glen Ellyn Village Manager Mark Franz noted, “I have only been with the Village of Glen Ellyn for a few months. I have been told that the Village and the College were able to work together cooperatively for decades. The College apparently needed to get the jurisdiction issue decided by an independent party, Judge Sheen, who decided that the Village, as a home-rule unit, has broad regulatory power. Even with that power, in 2007 the Village was able to agree with the College over the terms of an intergovernmental agreement concerning most of these issues. We will review that agreement to see whether a similar relationship can be re-established.”

Mr. Diamond explained that on the only specific ordinance before the Court, the Judge ruled that the College had to have a local liquor license to serve liquor at its new Culinary and Hospitality Center. The College had applied for a local liquor license, but decided it only needed a State license because it refused to acknowledge the Village’s jurisdiction. The Village is prepared to issue the liquor license to the College as agreed to by the Village Board earlier this year.

If the College and the Village, under the Court’s ruling, cannot work out any questions about jurisdiction, they will be resolved by the Court under the three-part standard explained above. Diamond commented on the standard contained in the Judge’s opinion. “The Judge will decide any disputes by seeing if any statutes of the State cannot be concurrently carried out when compared with the Village’s own local regulation. The standard is not whether the College doesn’t agree with a Village ordinance, but whether there is a clearly expressed State rule in conflict with the Village’s ordinances. That should not happen very often.”

The Village is optimistic that with the jurisdiction issue resolved, that the positive relationship with the College will be restored. Village President Pfefferman stated, “the Village and the College have had a long history of cooperation and the Village looks forward to that continuing.”

# # #