

**CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT  
DuPage County, Illinois**

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RE: College of DuPage v. Glen Ellyn  
10 CH 3510

Nov. 8, 2011

Letter of Opinion

Dear Counsel,

Background

The College of DuPage, ("the College"), is a public community college under the Illinois Public Community College Act, 110 ILCS 805/1-1 et. seq,

located mostly within the Village of Glen Ellyn. The Village of Glen Ellyn (“the Village”) is a home rule municipality under Article VII, Section 6A, of the Illinois Constitution. The College established a Facilities Master Plan, adopted in 2005, which included construction of new and upgraded facilities as well as construction of a new Homeland Security Building, other new buildings, infrastructure, parking enhancements, signage renovation and other improvements. During construction, a number of the Village’s ordinances were not followed and permits were not issued. On June 14, 2010, the Village Board adopted a Resolution stating that the Village intended to enforce its ordinances. On June 15, 2010, the Village posted Stop Work Orders halting the College’s signage project.

The College filed a Complaint requesting: (1) a Temporary Restraining Order (“TRO”) to resume work and (2) a declaratory judgment. The TRO was denied. The declaratory judgment requested the court find: (1) that the State Board and not the Village of Glen Ellyn has exclusive jurisdiction over the facilities, programs or property of the College of DuPage; (2) that the Village of Glen Ellyn does not have jurisdictional authority over the facilities, programs or property of the College of DuPage; and (3) that the court award costs. The Village filed a Counterclaim requesting the court: (1) find that the Village of Glen Ellyn has jurisdiction over the construction projects of the College of DuPage; (2) award the Defendants and Counter-Plaintiffs their costs of suit; (3) enjoin the College from occupying any buildings without an occupancy permit; (4) cease engaging in any further construction at the College without the

necessary building permits; and (5) enjoin the College from failing to comply with any other sections of the Municipal code relating to zoning, subdivision, and drainage.

The parties filed Cross Motions for summary judgment. In addition, the parties filed additional Sur-Replies concerning the College's liquor license.

### Discussion

Generally, summary judgment is appropriate only when the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c)(West 2011). However, in those situations where parties file cross-motions for summary judgment, as in this case, the parties invite the court to decide the issues involved as questions of law. *Falcon Funding, LLC v. City of Elgin*, 399 Ill. App. 3d 142, 147, 924 N.E.2d 1216, 1221 (2d Dist. 2010). Here, the parties ask for a declaratory judgment under 735 ILCS 5/2-701.

The act providing for declaratory judgments must be restricted to questions that are within the province of a court to determine. *Spalding v. Granite City*, 415 Ill. 274, 283, 113 N.E.2d 567, 572 (Ill. 1953). It cannot be construed as authorizing a court to grant declarations of rights involving mere abstract propositions of law without regard to the interest of the parties in such question, or the giving of advice. *Id.* The statute provides that courts "may in cases of actual controversy make binding declarations of rights, having the force of final judgments." 735 ILCS 5/2-701 (West 2011) It also provides that

“[t]he court shall refuse to enter a declaratory judgment or order, if it appears that the judgment or order, would not terminate the controversy or some part thereof, giving rise to the proceeding.” 735 ILCS 5/2-701 (West 2011). In the present case, both parties seek a judgment on the issue of jurisdiction in rather broad terms.

In its Motion for Partial Summary Judgment, the College asks the court “to declare that the Illinois Community College Board and not the Village of Glen Ellyn has exclusive jurisdiction over the College’s property, construction projects, and facilities.” (*College of DuPage’s Motion for Partial Summary Judgment* ¶ 1). The Village requests in its Motion for Summary Judgment that the court enter an order: (1) declaring that the College of DuPage is not an independent agency of the State subject only to the jurisdiction of the Illinois Community College Board; (2) finding that the ordinances and regulations of the Village of Glen Ellyn, pertaining to its government and affairs, including but not limited to the power to regulate for the protection of the public health, safety, morals and welfare, apply to the College of DuPage; (3) finding jurisdiction of the Village over the College subject to the general standards set forth in *Wilmette Park District v. Village of Wilmette*, 112 Ill.2d 490 N.E.2d 1282 (Ill. 1986); and (4) enjoining the College from violating any sections of the municipal code or municipal regulations based on jurisdictional grounds. (*Def.’s Motion for Summary Judgment* 3-4).

In the case sub judice, the College requests that the court “grant summary judgment in its favor on its request for declaratory relief finding that

the Village does not have jurisdiction over review, permitting, approval and inspection of College construction projects and facilities.” (*The College’s Motion for Partial Summary Judgment* ¶ 5). For statutory support, the College argues the Illinois General Assembly has entrusted regulation of community college construction projects, facilities and property to the State Board, not the municipalities, like the Village, by enactment of the Public Community College Act, 110 ILCS 805/1-1 et seq. (*The College’s Motion for Partial Summary Judgment* ¶ 6). Specifically citing 110 ILCS 805/2-12(c), the College asserts: “[T]he State Board has the duty and the full and exclusive authority to ‘approve’ capital projects and ‘dictate’ the means and methods for all community college capital projects.” (*The College’s Reply In Support of Its Motion for Summary Judgment* 3). However, section 2-12 does not grant exclusive authority nor does it grant the power to dictate the means and methods for all community college capital projects. It provides:

The [Illinois Community College] Board shall have the power and it shall be its duty:

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(c) To approve all locally funded capital projects for which no State monies are required, in accordance with standards established by rule.

110 ILCS 805/2-12(c) (West 2011). Section 2-12 gives the Board the power to approve locally funded capital projects, but there is no mention of exclusive jurisdiction or power to dictate means or methods, and the legislature cannot grant exclusive jurisdiction over home rule municipalities implicitly. Section 6(i) provides that home rule units may perform concurrently with the state any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the state's exercise to be exclusive. Ill. Const. 1970, art. VII, § 6(i). The intent and purpose of the home rule provisions is to severely limit the judiciary's

authority to preempt home rule powers through judicial interpretation of unexpressed legislative intent. City of Oakbrook Terrace v. Suburban Bank & Trust Co., 364 Ill. App. 3d 506, 514, 845 N.E.2d 1000, 1007 (2006).

“We have confined ourselves to the aforementioned rules because the 1970 Illinois Constitution states that a municipality's home rule powers are preempted by the State under very narrow circumstances:

“Home rule units may exercise and perform concurrently with the State any power or function of a home \*186 rule unit to the extent that the General Assembly by law does not *specifically* limit the concurrent exercise or *specifically* declare the State's exercise to be exclusive.” (Emphasis added.) (Ill. Const.1970, art. VII, § 6(i).)

The purpose of section 6(i) “is to eliminate or at least reduce to a bare minimum the circumstances under which local home rule powers are preempted by judicial interpretation of unexpressed legislative intention.” Baum, *A Tentative Survey of Illinois Home Rule (Part II): Legislative Control, Transition Problems, and Intergovernmental Conflict*, 1972 U.Ill.L.F. 559, 571.” Scadron v. City of Des Plaines, 153 Ill. 2d 164, 185-86, 606 N.E.2d 1154, 1163 (1992)

Section 6(h) provides that the General Assembly may “provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit.” (Ill. Const.1970, art. VII, § 6(h).) We believe the language of section 6(h) is clear. In order to meet the requirements of section 6(h), legislation must contain express language that the area covered by the legislation is to be exclusively controlled by the State. (See *City of Evanston v. Create, Inc.* (1981), 85 Ill.2d 101, 108, 51 Ill.Dec. 688, 421 N.E.2d 196; *Beverly Bank v. County of Cook* (1987), 157 Ill.App.3d 601, 605, 109 Ill.Dec. 873, 510 N.E.2d 941.) It is not enough that the State comprehensively regulates an area which otherwise would fall into home rule power. Vill. of Bolingbrook v. Citizens Utilities Co. of Illinois, 158 Ill. 2d 133, 138, 632 N.E.2d 1000, 1002 (1994).

The legislature does not grant exclusive jurisdiction to the Community College Board in the Public Community College Act—rather, the Public Community College Act, 110 ILCS 805/1-1 et seq., creates a system of State oversight to local community colleges to supplement the existing State-wide, constitutionally-mandated State Public School system. Section 805/2-1 of the Public Community College Act creates a “State Board.” 110 ILCS 805/2-1 (West

2011)(“There is created the Illinois Community College Board hereinafter referred to as the ‘State Board.’”). In turn, local “contiguous and compact territories” that satisfy certain requirements may petition to become community college districts. 110 ILCS 805/3-1 (West 2011)(“Any contiguous and compact territory, no part of which is included within any community college district, unless all of such district is included which has an equalized assessed valuation of not less than \$150,000,000 and contains a population of not less than 60,000 persons may be organized into a community college district within the State system.”). Although there is State oversight, by no means does the Public Community College Act create a continuous State-wide secondary education system.

In order to rely on *Board of Trustees of University of Illinois v. City of Chicago*, which held that state universities are not subject to the health and safety ordinances of municipalities, the College argues that it is part of an educational institution regulated “statewide and of statewide concern,” and thereby exempt from the jurisdiction and authority of the municipalities within which their facilities are located. 317 Ill. App. 3d 569, 572-73, 740 N.E.2d 515, 518 (1st Dist. 2000). However, the College is not part of the State-wide education system referred to in *Board of Trustees of University of Illinois v. City of Chicago*, and therefore cannot rely on *Board of Trustees of University of Illinois v. City of Chicago*.

In *Board of Trustees of University of Illinois v. City of Chicago*, the court relied on *City of Chicago v. Board of Trustees of the University of Illinois*, and quoted:

[A] municipality's home rule power does not authorize it to require state educational institutions to collect and remit city taxes because such a requirement would interfere with the state's constitutional mandate to operate a statewide educational system.

293 Ill.App.3d 897, 689 N.E.2d 125 (1st Dist. 1997). The court then found that the University of Illinois was not subject to the city's ordinances because the Board of University of Illinois was "an arm and instrumentality of the state." *Board of Trustees of University of Illinois v. City of Chicago*, 317 Ill. App. 3d at 572-73.

Most significantly, the schools in those cases were part of the public school system mandated by the Illinois Constitution under article X, and public community colleges, like the College, are not. In *Allen v. Illinois Community College Bd.*, the court makes clear that community colleges are not part of the constitutionally mandated public school system, and likened them to public corporations rather than an arm and instrumentality of the state. 315 Ill.App.3d 837, 734 N.E.2d 926 (5th Dist. 2000). The court found:

Moreover, the public school system protected by the 1970 Illinois Constitution does not include community colleges. "There is no authority to suggest that article X of the Illinois Constitution applies to the State's operation of community colleges." [citation omitted] Community college districts are created by the legislature pursuant to its authority to create public corporations, not under any provision of the Illinois Constitution. [citation omitted] Thus, the rules pertaining to public elementary and secondary schools do not apply to community colleges...

*Allen v. Illinois Community College Bd.*, 315 Ill.App.3d at 844. The extent to which community colleges are regulated statewide is not the same as the State's public universities and public elementary and secondary schools--while planning may fall under a state board, the board is to encourage and establish a system of "locally initiated and administered comprehensive community colleges." 110 ILCS 805/2-12 (West 2011).

In fact, the court, in *Board of Trustees of Community College Dist. No. 502, County of Du Page v. Department of Professional Regulation*, holds the College is not a State agency, but is rather a unit of local government. 363 Ill.App.3d 190, 842 N.E.2d 1255 (2d Dist. 2006). Because the College was created by local referendum, funded by local property taxes, and its officials were locally elected, the court found the College a "unit of local government" within meaning of Local Government Selection Act's definition of political subdivision, and the the court held that the College was a "political subdivision" subject to the Local Government Professional Services Selection Act, rather than a "state agency" subject to the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act, which defined "State agency" as "any department, commission, council, board, bureau, committee, institution, agency, **university**, government corporation, authority, or other establishment or official of this State." (Emphasis added) 30 ILCS 535/15 (West 2004).

The College also relies on *Board of Education, School District 33, DuPage County v. City of West Chicago*, 55 Ill. App. 2d 401, 404, 205 N.E.2d 63, 65 (2d

Dist. 1965), where the court found that public school districts are exempt from the building codes of the municipality wherein the school district is located because the School Code provided statutory provisions for the erection of school buildings. *Id.*, at 404. While the Public Community College Act provides for approval of construction projects by the Illinois Community College Board, a comprehensive system for review, issuance of building permits, inspections, or issuance of certificates of occupancy is markedly lacking compared the School Code. The College argues the Village does not have an interest in inspection because: “Illinois law requires the College -- and not the Village --to assume the legal responsibility and the ensuing liability for College property.” (*The College’s Reply in Support of its Motion for Summary Judgment* 4); notably, nor does the State “assume the legal responsibility and the ensuing liability for the College property.” See 110 ILCS 805/3-38.1; 110 ILCS 805/3-29. Instead, the College is granted the power to procure insurance and contract for important services such as fire protection (something which the School Code mandates statutorily for the constitutionally mandated public school system). As an aside, if a municipality or fire district is to provide services, that entity may simply add a provision in an intergovernmental agreement that it has the right to inspect and approve buildings it is to protect. Ultimately, although the Public Community College Act grants some autonomy to community colleges to decide how to handle health and safety issues, it does not legislatively pre-empt other governmental agencies from regulating or inspecting buildings.

The Public Community College Act implicitly recognizes a degree of intergovernmental cooperation may be necessary and that concurrent exercise of power with other entities is completely feasible. See 110 ILCS 805/3-40.1 (West 2011)(“Nothing herein contained shall be construed to restrict or prohibit the rights of community college districts or school districts to enter into joint agreements under the provisions of the Intergovernmental Cooperation Act, as now or hereinafter amended.”); 110 ILCS 805/3-38.2 (West 2011)(“To enter into contracts with any municipality or fire protection district in which any community college buildings are located for the purpose of reimbursing such fire protection district or municipality for the additional costs of providing fire-fighting equipment, apparatus or additional paid personnel occasioned by the presence of community college buildings within the municipality or fire protection district.”); 110 ILCS 805/3-20.3.01 (West 2011)(“Whenever, as a result of any lawful order of any agency, other than a local community college board, having authority to enforce any law or regulation designed for the protection, health or safety of community college students, employees or visitors, or any law or regulation for the protection and safety of the environment, pursuant to the “Environmental Protection Act,” any local community college district, including any district to which Article VII of this Act applies, is required to alter or repair any physical facilities, or whenever any district determines that it is necessary for energy conservation, health or safety, environmental protection or handicapped accessibility purposes that any physical facilities should be altered or repaired and that such alterations

or repairs will be made with funds not necessary for the completion of approved and recommended projects for fire prevention and safety...). The request, “to declare that the Illinois Community College Board and not the Village of Glen Ellyn has exclusive jurisdiction over the College’s property construction projects, and facilities,” sweeps too broadly for the court to grant. (*College of DuPage’s Motion for Partial Summary Judgment* ¶ 1).

On the other hand, the Village claims jurisdiction<sup>[1]</sup> over its own boundaries as a home rule municipality under Article VII, Section 6 of the 1970 Illinois Constitution. Article VII, Section 6 provides, in pertinent parts:

[A] home rule unit may exercise any power and perform any function pertaining to its government and affairs, including, but not limited to the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

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[However, t]he General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power...

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Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.

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Powers and functions of home rule units shall be construed liberally.

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<sup>[1]</sup> An issue raised by the College is the Village’s standing to raise a defense or bring its Counterclaim. In Section 11, “Enforcement” of the Intergovernmental Agreement, it provides: “The parties to this Agreement may, in law or in equity, by suit, action, declaratory judgment, mandamus or any other proceeding, including without limitation, specific performance, to enforce or compel the performance of this Agreement.” (Ex. B. The Village’s Response to the College’s Motion for Summary Judgment 14). The Agreement also gives the Village the right to withhold permits. See Section 4(B) (2). The College argues the Public Community College Act does not provide a private right of action, and it appears the College claims an administrative action could have been taken rather than seeking a declaratory action. The administrative action claim would appear to be waived due to the fact that the College sought judicial review.

Ill. Const. 1970 art. VII, § 6 (West 2011). Put generally, home-rule municipalities can control their own affairs in the areas of public health, safety, welfare, etc., unless the Illinois General Assembly specifically limits them from doing so. *Village of DePue, Illinois v. Viacom Intern., Inc.*, 632 F.Supp.2d 854, 862 (C.D.Ill. 2009).

Home-rule in Illinois originates from the idea that local problems and issues are usually best addressed at the local level of government. *Schillerstrom Homes, Inc. v. City of Naperville*, 198 Ill.2d 281, 286, 762 N.E.2d 494 (Ill. 2001). If the legislature chooses not to act, a local ordinance and a state statute may operate concurrently under article VII, § 6(i). Ill. Const. 1970, art. VII, § 6(i) (“Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.”). Under section 6(i), home rule units can continue regulating activities in their communities, even if the State also has regulated such activities. *Schillerstrom Homes, Inc.*, 198 Ill.2d at 287. Thus, section 6(i) simply eliminates the implied preemption of home rule power by judicial interpretation of unexpressed legislative intention. *Id.* A statute intended to limit or deny home rule powers must contain an express statement to that effect. *Palm v. 2800 Lake Shore Drive Condominium Ass’n*, 401 Ill.App.3d 868, 929 N.E.2d 641 (1st Dist. 2010).

The Village requests that the court find that “the ordinances and regulations of the Village of Glen Ellyn, pertaining to its government and

affairs, including but not limited to the power to regulate for the protection of the public health, safety, morals and welfare, apply to the College of DuPage,” and the Village asks the court to enjoin the College from violating any sections of the municipal code or municipal regulations based on jurisdictional grounds. (*Def.’s Motion for Summary Judgment* 3-4). Additionally, the Village asks the court to find “jurisdiction of the Village over the College subject to the general standards set forth in *Wilmette Park District v. Village of Wilmette*, 112 Ill.2d 490 N.E.2d 1282 (Ill. 1986). The judgment the Village seeks is too broad-- such a finding would neglect areas where the legislature has expressly pre-empted the power of home rule units.

In *Wilmette Park District v. Village of Wilmette*, the issue was couched in terms of immunity from zoning ordinances. The Wilmette Park District contended that, by ruling that the park district must comply with the village's zoning ordinance, the appellate court's decision radically altered the status of independent park districts and concurrent municipal governments in contravention to prior case law. Specifically, the park district cited a number of cases in support of the proposition that a park district is to be cloaked with a broad shield of immunity from the zoning ordinances of its host municipality. The Illinois Supreme Court did not agree and held no such immunity existed. The present case does not concern Park Districts; and, the ‘standards’ set in *Wilmette Park District v. Village of Wilmette* is not the framework to analyze conflicting State and home-rule power.

There already exists a framework to analyze conflicting State and home-rule power. Under Illinois law, if there 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 under the state's constitution: first, the municipal exercise of power must pertain to the municipality's government and affairs; second, the General Assembly must not have specifically preempted the power or function that the municipality seeks to exercise; and third, if the municipality's exercise of power pertains to the municipality's government and affairs and is not specifically preempted by the General Assembly, then it is up to the courts to determine the proper relationship between the local ordinance and the relevant state statute. *Schillerstrom Homes, Inc.*, 198 Ill.2d at 289-90.

Applying the three-part test to determine whether a municipality's actions are a valid exercise of its home rule authority, the court must first decide whether the exercise of power by the municipality is a power pertaining to its government and affairs. The Village's Resolution 10-13, passed June 14, 2010, touches on a number of areas of regulation including storm water management, traffic and pedestrian flow, the public water system, the College's landscaping plan, directional and informational signage, traffic flow and overflow parking, and occupying buildings without a permit—but, generally, the Resolution seeks to enforce local, municipal ordinances. The Illinois Supreme Court recognized that:

[T]he difficulty in determining the extent of home rule power arises because many matters are of both local and regional or statewide

concern. \* \* \* [The judiciary has] to decide which \* \* \* matters are sufficiently local in character so as to be subject to the home rule power. Home rule \* \* \* is predicated on the assumption that problems in which local governments have a legitimate and substantial interest should be open to local solution and reasonable experimentation to meet local needs, free from veto by voters and elected representatives of other parts of the State who might disagree with the particular approach advanced by the representatives of the locality involved or fail to appreciate the local perception of the problem. Whether a problem is of statewide or local dimension must be determined "with regard for the nature and extent of the problem, the units of government which have the most vital interest in its solution, and the role traditionally played by local and statewide authorities in dealing with it.

(Citations omitted) *Scadron v. City of Des Plaines*, 153 Ill.2d 164, 176, 606 N.E.2d 1154 (Ill. 1992). If the effects of regulations on the College remain a local concern, the regulations would likely pertain to its government and affairs. The College and the Village disagree on the boundaries of the College, but the Village does not propose enforcing ordinances outside of Glen Ellyn's municipal boundaries. Thus, the effect is likely local, not of statewide concern.

Second, the court must determine whether the legislature has specifically limited the local exercise of the power at issue or whether the legislature has specifically declared the State's exercise to be exclusive, thereby totally preempting a home rule unit's exercise of its constitutional power. The Public Community College Act does not explicitly limit the local exercise of power, but the Public Community College Act requires approval of the Community College Board for capital improvements, particularly concerning sources of funding. In addition, community colleges are not an instrumentality of the State. Although plans must be approved by the Illinois Community College Board, oversight

and regulation is expected on the local level and is not prescribed by State legislature.

Historically, the College and the Village have had an amicable relationship. The College applied for and received nineteen (19) building permits from the Village of Glen Ellyn between 1973 and 2007, and twenty-eight (28) building permits from the Village from 2007 to 2008. In addition, the Village passed a Resolution creating a special signage district for the College in 2002. The local ordinance and the state law are compatible and allow concurrent jurisdiction. The Illinois Community College Board must approve of capital improvement plans, but to be successful, capital improvements projects require local cooperation. Since the Village's Resolution concerns, in essence, all of its ordinances--including but not limited to, storm water management, traffic and pedestrian flow, the public water system, the College's landscaping plan, directional and informational signage, traffic flow and overflow parking, and occupying buildings without a permit—the court is not issuing a declaration that all of the ordinances are necessarily not pre-empted. The court simply finds concurrent exercise of jurisdiction is possible, and appears to be what the legislature intended.

Concerning liquor licensing, the College is not an arm or instrumentality of the State. *Allen v. Illinois Community College Bd.*, 315 Ill.App.3d at 844. Liquor control is subject to concurrent jurisdiction of state and local government; home-rule municipalities may legislate in area of liquor control,

except as restricted by state, pursuant to home-rule provisions of state constitution. *Sip & Save Liquors, Inc. v. Daley*, 275 Ill.App.3d 1009, 1015, 657 N.E.2d 1 (1st Dist. 1995). Courts have approved local liquor ordinances in home-rule municipalities that were either more restrictive than State statutes on the same subject matter or that placed additional requirements on licensees not found in State statutes. *Id.* State Constitution does not prohibit home rule municipalities from dealing with problems associated with alcohol abuse in ways different from State's, as long as method does not conflict with or run contrary to state law. *Town of Normal v. Seven Kegs, Two Tappers and Two Barrels*, 234 Ill.App.3d 715, 599 N.E.2d 1384 (4th Dist. 1992). Liquor control is subject to concurrent jurisdiction between state and local units of government; and home-rule municipalities may legislate freely in the area of liquor control except as restricted by state pursuant to this section. *Easter Enterprises, Inc. v. Illinois Liquor Control Com'n*, 114 Ill.App.3d 855, 449 N.E.2d 1013 (3d Dist. 1983). In our case the Village's ordinances are more restrictive, for instance the limitations on who may serve liquor, but the ordinances do not conflict with or run contrary to state law. Thus, the concurrent exercise of power is possible.

### Conclusion

The motions for summary judgment filed by both of the parties are denied. The Illinois Community College Board does not have exclusive jurisdiction over the College. The Public Community College Act recognizes

that other agencies, other than a local community college board, may have authority to enforce laws or regulations designed for the protection, health or safety of community college students, employees or visitors; and, the College Board is not a part of the public school system mandated by the Illinois Constitution under article X. It appears the legislature intended the College may be locally initiated and administered, and therefore the College is not exempt from the jurisdiction and authority of the municipalities in which they are located.

However, under Illinois law, if there 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 under the State's constitution. The court will not apply the standard in *Wilmette Park District v. Village of Wilmette*, 112 Ill.2d 490 N.E.2d 1282 (Ill. 1986). The Village's Resolution to enforce zoning requirements appears to pertain to government and affairs locally and not State-wide concerns. Although capital improvement plans must be approved by the Illinois Community College Board, oversight and regulation is expected on the local level and is not prescribed by State legislature. The Village's ordinances are not explicitly pre-empted by the Public Community College Act. The Community College Board and the Village can exercise power concurrently and the Public Community College Act encourages intergovernmental cooperation. However, the Court would b required to use the three-part inquiry in order to determine

which of the Village's purported exercise of home-rule power is valid under the State's constitution.

The State and local liquor licensing ordinance are not conflicting and concurrent exercise of power is possible.

Very Truly Yours,

By:  \_\_\_\_\_

Judge Terence M. Sheen