

STATE RECORDS COMMISSION
MINUTES

June 15, 2016
Springfield, Illinois

A meeting of the State Records Commission was held at 9:30 a.m., June 15, 2016 in the John Daly conference room of the Margaret Cross Norton Building in Springfield.

Commission members present were: Chairman David Joens, designee of Secretary of State Jesse White; Steve Klokkenga, representing State Comptroller Leslie Geissler Munger; Lynn Patton, representing Attorney General Lisa Madigan and Matthew Sebek, representing acting director Michael Hoffman of the Department of Central Management Services.

State Archives staff members present were: Rochelle Joseph, Lynn Kahbeah, Steve Jones, and Pat Davis.

Commission member absent was: G. Allen Mayer, representing State Treasurer Michael Frerichs

Records Officers present were Linda Ballard from the Illinois Department of Revenue and Mark Powell, via phone from the Illinois Pollution Control Board.

The meeting was called to order by Chairman Joens at 9:30 a.m. The first item on the agenda was a review of the May 18, 2016 minutes. Mr. Sebek moved to approve. Mr. Klokkenga seconded the motion. The motion carried and the minutes from the May 18, 2016 State Records Commission were unanimously approved as written.

OLD BUSINESS

The first item of old business was Application 12-70A from the Department of Revenue (Office of Administrative Hearings). An agency representative was present to answer questions. This Application was deferred 5/18/16 to research what happens to the referrals granted to the Tax Tribunal. Ms. Joseph gave a summary of the changes which were made. to clarify what happens to referrals to the Independent Tax Tribunal. . Mr. Sebek moved to approve as rewritten. Mr. Klokkenga seconded the motion. The motion carried and Application 12-70A was unanimously approved as rewritten.

The next Application to be considered was 16-07 from the Department of Revenue (All Divisions and Bureaus). This Application was deferred 5/18/16 to research the retention period of item number 1 “Medical Cannabis Cultivation Privilege Tax Files.” Ms. Joseph told the commission item 2 “Medical Cannabis Privilege Tax Audit Files” was removed from the draft Application. Revenue is working on writing a comprehensive application for audit records which will include item 2. The concern of the commission from the May meeting was the three year retention of item 1 “Medical Cannabis Cultivation Tax” was inadequate. The commission was leaning more towards a six or ten year retention. Ms. Ballard said the three (3) year retention is standard for most tax returns. Ms. Ballard said on tobacco and the medical cannabis series they have thirty-six months to file an amended return which is parallel to the 1040 series; and as of July 1 this will be reduced to thirty months. She said the three year retention is the minimum time period. She said if there are any balances, etc. there is internal criteria which is more stringent. Ms. Ballard said the administrative rule is thirty-six months and July first will be reduced to thirty months but there are no statutes in place yet. Ms. Patton asked if the rule is pending. Ms. Ballard said it is in place with the agency’s rules and instructions on the forms. Ms. Patton said when she reviewed section 205 of the “Medical Cannabis Pilot Program Act” it references a number of provisions in the “Retailers Occupational Tax Act” that are applicable. Ms. Ballard said those forms are under retail and are used if a ST1 or something needs to be filed under sales tax. Those forms fall under a different retention. These forms are only under the MC series which are privilege tax forms for the cultivators and distributors. She said all businesses are required to file these same tax forms no matter what type of business. Those under the Sales Tax Act are under a different schedule. Ms. Patton said “Retailers Occupational Tax Act” is not for sales tax it is for a tax on an individual’s occupation. Ms. Ballard said that terminology is used by Revenue for “sales.” Ms. Patton asked if this is a Sales Tax or a Retailer’s Occupation Tax. Ms. Ballard said it is neither it is a “Privilege Cannabis Cultivation Tax,” which is actually separate. Ms. Patton suggested inserting a reference to the citation in the administrative rules that sets the thirty six month statute of limitation. Ms. Ballard asked if instead they can refer to the forms for the retention since in July it is going to thirty months. Ms. Patton asked if the forms are in the rules. She said many agencies when they promulgate administrative rules include forms as an appendix to the rules. Ms. Ballard said the forms are what Revenue publishes to the public so they are bound by whatever is included in the form. Ms. Patton said her concern was when she reviewed the “Pilot Program Act” she said a relation to the “Retailers Occupation Tax” which had a very specific

statute of limitation which was beyond three (3) years. She said if this item does not fall under that act she would like to know which one it falls under. Ms. Patton said if there is no statute of limitation and the agency is using the forms she would like to know which rules the forms relate to. Mr. Sebek said since the volume of the record series is so small Revenue could maintain the records for a longer period of time. Ms. Ballard said she did not want to set a precedent of retaining records longer than the prescribed retention period. Mr. Sebek said the uniqueness of the subject matter raised the concern over the retention period. Ms. Ballard said if one of the files comes under investigation they would first pull the ST1's, the withholding files, and the business files first. She said it wouldn't be these types of files. Ms. Patton suggested inserting a notation saying "pursuant to" then the citation to the rules "the statute of limitations for cases brought under this section and the retention period that is in the rules". After deliberation the commission suggested deferring this Application in order to find the citation to include in the description. Mr. Klokkenga moved to defer. Ms. Patton seconded the motion. The motion carried and Application 16-07 was deferred unanimously.

The next Application on the agenda was 16-22 from the Illinois Toll Highway Authority (Finance). This Application was deferred 5/18/16 in order to research whether the retention is sufficient. Mr. Jones said he checked retention for Attorney General's general law division and case files are thirteen (13) years. Mr. Klokkenga moved to approve as rewritten. Mr. Sebek seconded the motion. The motion carried and Application 16-22 was unanimously approved as rewritten.

NEW BUSINESS

The next item on the agenda was Application 15-74 from the Department on Aging. The agency has requested to pull this item from the agenda until a later date.

Application 16-14 from the Illinois Guardianship & Advocacy Commission was next on the agenda. Ms. Patton moved to approve. Mr. Sebek seconded the motion. The motion carried and Application 16-14 was unanimously approved as written.

The next item on the agenda was 16-08 from the Illinois Pollution Control Board. Ms. Patton moved to item 1 "Adjudicatory Case Files" subsection paragraph "B" Ms Patton requested when writing citations using the word "through" instead of a "dash." She said sometime the dash is part of the

numbering system so, the citation should be listed as 5/35 through 38. Ms. Patton then moved to “C.” She suggested inserting the citation [415 ILCS 5/57 et. seq] before the semicolon in line four. Ms. Patton then moved to “G” she asked if the citation was through 11-55 or 11-65. The commission contacted Mr. Powell via phone. Mr. Powell said he believes it is 55 but he will confirm the citation. Ms. Patton moved to item 2 “Regulatory Proceedings File.” Ms. Patton suggested inserting the word “through” in the citation instead of the dash in line five of the description it should be referenced “26 through 29.” Ms. Patton then moved to the recommendation on page five. She said the trigger in the retention is “closure of case.” She asked if “completion of the rulemaking” or “conclusion of proceedings” would be more appropriate. Mr. Powell said “conclusion of proceedings” would be accurate. Ms. Patton moved to the recommendation on page four. She said the retention states transfer to State Archives for permanent retention but the notation states “certain data in this record series, such as trade secrets and other non-disclosable information, is confidential and exempt from public inspection etc... She asked how the State Archives deals with such issues. Mr. Joens said when these types of records are accessioned into the Archives a copy of the retention schedule is maintained with them. Mr. Joens later stated that this was back up microfilm only and thus was only being stored by the archives. It is still the property of the agency. Mr. Klokkenga move to approve as amended. Mr. Sebek seconded the motion. The motion carried and Application 16-08 was unanimously approved as amended.

Next on the agenda was Application 16-49 from the State Fire Marshal (Fire Prevention). Ms. Patton moved to line 7 of the description. She said the citation listed 30/22 seems to pertain to fireworks regulations. She asked that the citation be reviewed and verify the last number is correct. Mr. Klokkenga moved to defer. Mr. Sebek seconded the motion. The motion carried and application 16-49 was unanimously deferred.

The next Application on the agenda was 16-41 State Retirement System (All). Ms. Patton moved to line three of the description. Ms. Patton suggested “Retirement System” be inserted after the word “Judges” and the word “The” be inserted before “General Assembly,” since these are two separate retirement systems. Mr. Sebek moved to approve as amended. Ms. Patton seconded the motion. The motion carried and Application 16-41 was unanimously approved as amended.

The last item on the agenda was Application 16-25 from the Illinois Comprehensive Health Insurance Plan. Ms. Patton moved to the superseded Application 04-01. She said section 405 was not superseded, and asked if this was because the record series ended. Ms. Joseph said yes. Ms. Patton then

asked where “406 ” was included in the new application. Ms. Joseph said this item was included in item 301. Mr. Klokkenga moved to approve. Mr. Sebek seconded the motion. The motion carried and Application 16-25 was unanimously approved as written.

PUBLIC COMMENT

There was no public comment.

The date of the next scheduled State Records Commission meeting is Wednesday, July 20, 2016 at 9:30 a.m. in the John Daly Conference Room of the Margaret Cross Norton Building, Springfield, Illinois. Mr. Klokkenga moved to adjourn. Mr. Sebek seconded the motion. The motion carried and the June 15, 2016 State Records Commission adjourned at 10:06 a.m.

The following applications were submitted to the State Records Commission members for consideration:

- 12-70A Illinois Department of Revenue
(Administrative Hearings)
Approved as Rewritten
- 16-07 Illinois Department of Revenue
(All Divisions and Bureaus)
Deferred
- 16-22 Illinois State Toll Highway Authority
(Finance)
Approved as Rewritten
- 15-74 Department on Aging
Withdrawn
- 16-14 Illinois Guardianship & Advocacy Commission
Approved as Written
- 16-08 Illinois Pollution Control Board
Approved as Amended
- 16-49 Illinois State Fire Marshal
(Fire Prevention)
Deferred
- 16-41 State Retirement System
(All)
Approved as Amended
- 16-25 Illinois Comprehensive Health Insurance Plan
Approved as Written