

# Burnside, Johnston & Connor

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May 14, 2020

**Hon. Ricky Gottman, Mayor**  
**Mrs. LaTisha Paslay, City Administrator**  
cityadmin@vandaliaillinois.com

IN RE: COVID-19 Developments

Dear Mayor and Administrator Paslay,

As you know, we have been dealing with developing issues surrounding the executive orders issued by Governor Pritzker and corresponding action by government agencies, most recently, the Fayette County Board. It is my understanding that the County Board proceeded to pass what had previously been referred to as the "Back to Business" plan and is now a resolution of record having received the unanimous support of the members of the Fayette County Board. Understandably, that act has prompted questions from government officials and residents of Vandalia.

I have also been approached with questions regarding the operation of our City recreations facilities, most notably the lake camping areas and the marina. The purpose of this letter is to outline for you what I know, and to advise you that your municipal officials including the Mayor, City Administrator and Chief of Police, have been in daily contact with me and other officials from various levels of government in an effort to best manage the developments as we get more information.

It is rare for your unit of local government to be dealing with issues surrounding conflicting information from the State and County levels, so I wanted to be forthcoming with information we have at this time. As of the writing of this letter, all Executive Orders issued by the Governor's office remain in force. While legal challenges have been initiated in at least three State level trial courts, it is my understanding that, without belaboring the minutia of the point, that those challenges will be litigated over the coming months, perhaps in United States District Court (Federal Court) in a similar fashion to the Beloved Church case, where a District Court judge refused to intervene to allow church services in violation of the Governor's Executive

Orders. Obviously, we will keep updating you as these challenges proceed, but the eventual outcome of those suits provide us no guidance today. The early indications do not seem to provide any traction for the idea that a challenge will alleviate the orders as to any persons or businesses within Illinois. As of the middle of today's writing, I have been advised of official county action in Henry County against local businesses by that County's State's Attorney, though I have been unable to verify that information with actual orders or documents. Be advised that this situation is evolving so quickly that it requires hourly attention.

I am providing a nonessential packet of compiled information for further analysis, the aim being for you to have access to the same materials relied upon by your officials and counsel. Further, I wished to advise you all that I spoke with your representative from your insurance provider at CCMSI. I was advised that the following statement is applicable: "the insurance industry generally does not provide coverage or other services for intentional acts and violations of law." I am aware that no insurance company wants to telegraph policy decisions or denials, but I wish to take this opportunity to advise you that I believe your insurance company is unlikely to defend any action inconsistent with the Executive Orders resulting from COVID-19 related claims, and that coverage will also not be extended. This means that if you take an official action in violation of the Governor's Orders, you could, and likely would, forfeit coverage. It is therefore my recommendation that you continue with your prior course of action, which is to encourage your constituents to follow the Governor's Orders and to refrain from taking any official action not consistent with those orders. This would include leaving the campground and marina areas as they have been until executive orders allow their opening.

As you know, based on the "Back to Business" plan adopted by the Fayette County Board, some entities have determined that they are not going to be following the current Executive Orders. Doing so presents the risks of State-agency level enforcement (license revocation) and a forfeiture of insurance coverage. Even worse, official City action in violation of the Executive Orders could result in being joined with any other entities in any lawsuits filed by individuals harmed or injured as a result of the spread of COVID that can be attributed to a specific violation of the Orders. Statements made by the Illinois Trial Lawyers association and the Illinois Department of Insurance have been consistent with this analysis. The only prudent course of action at this time is to continue to act in conformity with the Governor's Orders and to monitor the evolving challenges. I am well aware of the pressures facing each of you, but wished to give you as much information as I could to assist, as well as my recommendation based on the law and facts available to us at this time.

Sincerely Yours,

Burnside, Johnston & Connor, P.C.

By:           /s/T. Ryan Connor            
          T. Ryan Connor

cc: Alderpersons of the City of Vandalia