Hallinan
Legislation
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Question 1

For the last twenty-five years, the State of Franklin has had a statute providing for the expungement of certain public records regarding criminal prosecutions. As originally enacted in 1973, the statute (Franklin Code § 40.1 01) provided as follows:

> All public records of a person who has been charged with a misdemeanor or a felony, and which charge has been dismissed, shall, upon petition by said person to the court having jurisdiction in the criminal proceeding in which the said person was charged, be removed and destroyed.

In 1979, the Franklin Supreme Court decided a case involving jail records maintained by a sheriff. The records were used solely for administrative purposes, and they were not available for public inspection under Franklin's Open Records and Freedom oflnformationAct ("FQRFIA"). The Court held that § 40.101 required destruction of the jail records to the extent that the records dealt with inmates held on charges that were subsequently dismissed.

The Court based its decision on the premise that "public records" within the meaning of the statute included "all records maintained by a public official, regardless of whether such records be for public inspection or for internal use." Doe v. Sheriff of Hamilton County, 110 N.E.3d 484, 490 (Franklin 1979). The purpose of the statute, the Court said, was to prevent a citizen from suffering the stigma of having been charged with a crime when the citizen was subsequently acquitted or the charge abandoned: "It is common knowledge that the preferment of charges against a citizen can have a severe impact upon his reputation, regardless of whether a conviction results; and this impact can be greatly increased by the dissemination of information concerning the accusation by public officers, with the official sanction that this implies."

In the next legislative session following the decision in Doe, the Franklin General Assembly enacted a statute amending § 40.101 so that it read as follows (with matter added by the amendment italicized):

> (a) All public records of a person who has been charged with a misdemeanor or a felony, and which charge has been dismissed, shall, upon petition by said person to the court having jurisdiction in the criminal proceeding in which the said person was charged, be removed and destroyed, provided that public records, for the purpose of this section only,

> shall not include arrest histories, investigative reports, intelligence information of law-enforcement agencies, or files of district attorneys-general that are maintained as confidential records for law-enforcement purposes and are not open for inspection by members of the public.
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> (b) Release of such confidential records or information contained therein other than to law enforcement agencies for law enforcement purposes shall be a misdemeanor of the second degree.

The sponsor of the bill setting forth the amendment said at the time of its introduction that the amendment was designed to "overrule" a portion of the decision in Doe. Specifically, the sponsor said, Doe "went too far" in protecting privacy rights and did so at the expense of legitimate law enforcement activities. In the absence of public dissemination of the the arrest information, according to the sponsor, there could be no risk of damage to the arrested person's reputation.

Three years ago, Christopher Robin was charged with food stamp fraud, a felony. Pursuant to a plea bargain, Christopher made full restitution over a two-year period to the Department of Human Services, which administers the food stamp program. In return, the criminal charges were dismissed at the end of the two years.

Following dismissal of the charges, Christopher filed a petition for expungement of all records regarding the charge and his arrest. In particular, he sought expungement of:

> (1) entries regarding him in arrest logs maintained by the municipal police department; these logs record all arrests made by the department and include the name of the person arrested together with an identification of the charge; under FQRFIA these logs are public records open for inspection and copying on demand by any member of the public;
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> (2) entries regarding him in jail population records maintained by the county sheriff these records, which catalog the name, identifying information, and charge of each person held in the jail for any purpose, are used for internal administrative purposes and are not open to public inspection under FORFIA; and
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> (3) entries regarding his arrest in the files of the Department of Human Services; the Department's records mentioning the arrest are part of Christopher's general file recording his interactions with the Department; the records are probably not open to public inspection under FORFIA, but the Department is not obligated to keep them secret and it does at times share pertinent information in the files with other government agencies, including schools, police departments, and tax authorities.

Should Christopher's petition be granted as to any of the above records? Why or why not?

Question 2

Hillview is a small town located about forty miles from the center of the capital city of Franklin. The central part of the town consists of an area about four blocks long by four blocks wide containing the city hall, some shops, a bed-and-breakfast inn, and a mini-mart style gas station. This area is immediately surrounded by an inner area (about 16 blocks long by sixteen blocks wide) populated predominantly by houses of varying size. Most of the houses are used as residences, but a few are occupied by professional offices for dentists, physicians, and lawyers. In addition, the residential area is the locale of the town's elementary, middle, and high schools, as well as two churches, one of which operates an elementary school (grades K-8) on its property. Finally, outside the residential area is a ring of predominantly undeveloped land used mostly for farming. In this outer ring is also located Hillview College, a private, nonsectarian, four-year liberal arts college that was founded in 1973.

In 1962, Hillview adopted a set of zoning ordinances. Under the ordinances the town's center is designated as a commercial district (C-i), the residential ring is designated residential (R-1), and the outer ring is designated agricultural (A-i). Section 343 of the Zoning Code provided that the permitted uses of land in the R-i district were as follows:

(1) Single and multiple family residences.

(2) Schools, including elementary, high and private, except correctional institutions.

(3) Libraries, community centers, and buildings used exclusively by the federal, state, county or town government for public purposes except penal or mental institutions.

(4) Churches and other places of worship including Sunday School buildings.

(5) Parks, playgrounds and play fields if approved by the town council.

(6) Uses customarily incidental to any of the above uses when carried out in the same dwelling, including also home occupations such as the office of a physician, surgeon, dentist, musician, artist, or any other similar use.

Prior to 1990, Hillview College's campus was located entirely in the A-i district at the boundary between the A-I and R- 1 districts. In 1990, as part of its plan to expand its student body, the college began buying houses located in the R-1 district near the campus. Initially, the college simply rented out

the houses, to students and others.

Beginning in 1994, however, the college began integrating its purchases into its operations. Two of the houses were converted for use as faculty offices, and a third was devoted to the financial aid office. At the time of these changes, the college received approval from the Hillview Zoning Board for structural and parking changes needed to accommodate the houses' new functions. In 1997, the college decided to convert a fourth and fifth house, this time for use as a "specialized learning center" for honors students. Once converted, the houses would have some faculty offices as well as study rooms and seminar rooms for honors classes.

Some Hillview residents living near the campus have viewed the college's growth with alarm, raising concerns about traffic and parking problems as well as fears of increased crime (by and against students) as the student population grows. These residents took their concerns to the Town Council and the Zoning Board. When the college sought approval for the changes necessary to create the "specialized learning centers" the Zoning Board turned them down on the ground that the centers would not be a permitted use in the R- 1 district. The college filed an appeal from the Board's decision to the Superior Court. The appeal is still pending.

Shortly after the appeal was filed, the Town Council enacted an amendment to § 343(2) of the Zoning Code which added after "penal or mental institutions" the following phrase: "or colleges, junior colleges, universities, or other institutions of post-secondary education." The ordinance making the amendment provided that it was effective immediately. Concurrently with enactment of the ordinance, the Council adopted a resolution declaring that "it is the intention and sense of the Town Council that the amendment adopted today is to clarify and declare the requirements of the Zoning Code as they already exist."

There is no dispute that, if the college's plans involve a permitted use under the Hillview Zoning Code, the Zoning Board's denial of approval was unlawful. How should the college's appeal be decided? Why? (The following dictionary definitions of "school" may or may not be useful in arriving at an answer.)

American Heritage Dictionary:

school: 1. An institution for the instruction of children or people under college age. 2. An institution for instruction in a skill or business. 3. a. A college or university. b. An institution within or associated with a college or university that gives instruction in a specialized field and recommends candidates for degrees. c. A division of an educational institution constituting several grades or classes. d. The student body of an educational institution. e. The building or group of buildings housing an educational institution. 4. The process of being educated formally, especially education constituting a planned series of courses over a number of years. 5. A session of instruction.

Question 3

Monarch Cruises is a Florida-based company that operates cruise ships transporting passengers on luxury cruises along the coast of Alaska. The cruises are of one or two weeks duration. All begin and end in Vancouver, British Columbia (i.e., in Canada). During the voyages, the ships stop at various Alaskan ports and the passengers may go ashore for shopping and sightseeing. The stops are of short duration (never overnight) and the passengers return to the vessel before it sails to the next port. At any given stop, as many as half the passengers remain on board, forgoing the the opportunity to visit the port.

The Customs Service is required, by 26 U.S.C. § 4471, to collect a $3 per passenger tax on the owners of vessels engaged in "covered voyages." The statute provides:

> (a) In general. There is hereby imposed a tax of $3 per passenger on a covered voyage.
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> (b) By whom paid. The tax imposed by this section shall be paid by the person providing the covered voyage.
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> (c) Time of imposition. The tax imposed by this section shall be imposed only once for each passenger on a covered voyage, either at the time of first embarkation or disembarkation in the United States.
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> (d) Definitions. For purposes of this subchapter the term "covered voyage" means that voyage of a commercial passenger vessel which extends over 1 or more nights during which passengers embark or disembark the vessel in the United States.

The legislative history relevant to the statute is sparse. The Senate Finance Committee s explanation of the bill that eventually became § 4471 stated that the purpose of the tax was "to meet partially the expenses incurred by the United States in providing navigation, safety and other services to cruise ships and their passengers." The Conference Committee report noted that ships making stopovers in the United States while travelling between foreign ports were already subject to a harbor maintenance tax; the report suggested that the tax imposed by § 4471 would be "in addition to that tax." The Conference report also stated that the tax would be imposed "either on initial embarkation or disembarkation in the United States," and ""when a passenger first embarks or disembarks in the U.S."; the tax, according to the report, will "apply to a vessel that embarks from a United States port on a voyage."

Monarch has been providing the Vancouver-Alaska cruises since 1976. Prior to 1997, the Customs Service had not sought payment of the tax as to any of the voyages. In 1997, however, the Service took the position that the tax was payable whenever a voyage included a stop inside the United States at which passengers left the vessel for any reason or duration. The Service thus began to

insist that Monarch pay $3.00 for each passenger who got off a cruise ship at an Alaskan port. It has filed an action for recovery of the unpaid amounts that it claims are due for all of Monarch's cruises to date.

Who should prevail? Why?

(Again, the following dictionary definitions may or may not be material to your answer.)

American Heritage Dictionary:

embark: v. 1. To cause to board a vessel or aircraft. 2. To go aboard a vessel or aircraft, as at the start of ajourney. 3. To set out on a venture; commence.

disembark: v. 1. To go ashore from a ship. 2. To leave a vehicle or aircraft. 3. To take ashore from a ship.

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