

OFFICE POLITICS



Dan Colombini speaks with new Mayer Brown partner **Mitchell Holzrichter** about his time in Illinois Governor Bruce Rauner's office and the challenges faced by the public and private sectors in 2017

What was behind your decision to return to Mayer Brown and the private sector?

I developed my practice at Mayer Brown before joining Governor Rauner's administration in January 2015. Among law firms, it was an easy decision to rejoin Mayer Brown: the firm's infrastructure practice continues to lead the nation, and the lawyers are creative and collaborative in their approach to client projects.

It was bittersweet to leave Governor Rauner's office. As a native and lifelong Illinoisan, I appreciated the chance to serve and to help advocate for government and economic reform. But this was the right time and opportunity to return to my legal practice.

What did you oversee during your time in Governor Rauner's office?

I served for two years, first as deputy general counsel and then as deputy chief of staff for legislative affairs.

As Deputy General Counsel, I supervised attorneys in the governor's office and across state agencies. Lawyers within the state play a key role in helping agencies to continue providing critical services during the ongoing budget impasse.

I am particularly proud of reforms we implemented to make state government more efficient and more responsive. By executive order, the governor established the state's first information technology agency. The state began the process of consolidating hundreds of stand-alone IT systems and using technology to streamline licensing processes.

As deputy chief of staff, I represented the governor in negotiations with the legislature and

managed the process by which agencies support and oppose legislation. While the legislature has failed to pass many of the governor's proposed government and economic reforms, we found success in other areas. Several significant criminal justice reforms were enacted to remove barriers to post-conviction re-entry and to reduce costs to taxpayers. We also increased funding for PK-12 education two years in a row and ended proration of state funds.

Do you see much P3 activity in the state beyond the I-55 highway in the coming years?

Illinois has an opportunity – and a need – to take greater advantage of P3s in delivering infrastructure projects. While Illinois prides itself on being the transportation hub of the nation, both the State of Illinois and the City of Chicago recognize the need to reinvest in and redevelop the region's highways, airports, and other assets. Voters endorsed this view in November when they overwhelmingly approved a state constitutional amendment to protect infrastructure funds.

At the same time, though, the state's poor fiscal condition makes it difficult to carry out projects with traditional delivery methods, which are typically funded through tax receipts and state-issued bonds.

Governor Rauner and IDOT decided to pursue the I-55 managed lanes project as a P3, which would allow the state to share risks and financing responsibility with a private partner and to leverage both user fees and private investment. IDOT has said that the project would cost \$400m to construct – funds that it does not have. IDOT has also recognized that developing managed

lanes through a P3, rather than general lanes, will enable the state to better manage traffic, reduce congestion, and deliver better service to the public.

IDOT has taken other steps to explore and potentially implement P3s. It identified a preferred option for reconstruction and widening of the I-290 expressway that includes potential toll or HOT lanes, as recently discussed in a public forum. IDOT is in the process of hiring a new manager to oversee P3 and alternative delivery projects. It has also previously supported legislation to authorize additional design-build projects.

What are the key things that government agencies need to address to get a successful P3 off the ground?

The agency should first understand what a P3 is – and as importantly, is not. A P3 can be a more efficient method for delivering a project, accounting for long-term costs, and allocating risks among the public and private sectors. A P3 can also take advantage of smarter assets – like using managed lanes to reduce congestion and provide better service to users. A P3 is not “free money”. The agency should know its project goals and measure the costs and benefits of a P3 against those goals.

As best as possible, the agency should resolve political questions and develop a plan for public engagement. P3s are still new to many US jurisdictions, and both politicians and the public will have questions. Unfortunately many earlier projects, particularly long-term concessions of existing assets, have caused confusion and misconceptions about new greenfield projects.



Illinois has an opportunity to take greater advantage of P3s

Industry will also be keener to invest the significant upfront time and cost required for a P3 procurement if it knows that the project will not be later subject to political decision making.

Of course the agency should also engage the right set of technical, financial, and legal advisors. While many large agencies conduct routine procurements with in-house personnel, a P3 is significantly more complex and less routine. Part of the advantage of a P3 is to better allocate risks; accomplishing that goal requires more upfront time in developing and negotiating project documents, but the product will pay dividends over time.

How can the private sector help to achieve these goals?

The private sector should understand that not every agency decision is made through an economic lens. Agencies must also consider public policy and politics, which can lead to contract terms that are less than perfectly efficient. During the procurement process the private sector should continue to provide comments to produce a more efficient risk allocation, at least so the agency understands the consequences of its decisions, but recognize that the public and private sectors view risks from different perspectives.

The private sector should also continue to have patience with US jurisdictions! P3s remain a relatively new method of project delivery. Over time the procurement process will become more routine, quicker, and more predictable – but it just isn't quite there... yet.

What role can the state play in assisting municipalities developing P3 pipelines?

Fortunately in Illinois, and in many other states, large municipalities have broad powers to procure and deliver projects, including through P3s. The City of Chicago has used P3s for over a decade.

Even where no procurement authority is needed, though, state action may still be needed, depending on the particular project. For example, Illinois state property tax law was changed in order to accommodate City of Chicago projects that included leasehold interests.

How do you view the US P3 market under the new federal government?

Both Republicans and Democrats have expressed support for greater investment in infrastructure, which is welcome. That bipartisan support is not new, but infrastructure seems to be one of the few areas of common agreement between the political parties at the moment. Infrastructure investment is also one of the top priorities of the new administration.

But we should not assume that the federal government will significantly increase direct highway funding – at least enough to fund the massive need. Federal gas tax receipts are stagnant.

Fortunately there are other steps the federal government can take to promote state and local government infrastructure projects. It could expand TIFIA and the use of private activity bonds, which have proven to be valuable tools for surface transportation projects, to other types of infrastructure projects. The government

could also expand its pilot program for tolling aging highways and stop requiring states to repay federal funds previously received.

What deals in the market are you currently involved in?

Since joining Mayer Brown, I have begun to work with a sponsor team on the Colorado Central 70 project. I am also looking forward to working again with the Texas Department of Transportation, with which I worked extensively before joining Governor Rauner's administration.

The firm is engaged on a number of other road and bridge projects, as well as social infrastructure, airport, and rail and transit projects. I look forward to assisting clients on those matters in the coming year.

Are you hopeful of more growth this year?

Yes, we will continue to see more P3 growth in both the short and long-term. The need and opportunity are there: our nation's infrastructure continues to deteriorate, and traditional government resources are not capable of meeting the need. At the same time, policymakers and the public have come to better understand the benefits of P3s when executed well, from reducing reliance on taxpayer funds to providing better service to the public.

The use of a P3 is not the right solution for every project, but it is increasingly an accepted and valuable delivery method across the United States. **P3**